SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1910.

No. 224.

THE UNITED STATES, PETITIONER,

vs.

ALBERT ECKSTEIN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Original.	Print.
Caption	A	1
Transcript from the Circuit Court of the United States for the Southern District of New York	1	1
Petition	1	1
Order for return	4	3
Bond of costs	5	3
Return of Board of General Appraisers	7	4
Protest No. 146247	8	5
Report of collector	10	6
Evidence before Board of General Appraisers	11	7
Testimony of Siegmund Klein	11	7
David W. Lee	14	9
Siegmund Klein (recalled)	15	9
Board's decision	19	11
Stipulation as to petition and order	22	13
Stipulation as to merchandise	24	15
Further evidence	26	16
Testimony of W. M. Crowe	29	18
Robert Burgess	36	23
Otis L. Humphrey	39	24
Albert Eckstein	43	27
Otto Fix	45	28
Bernard Rentrop	50	31
Otis L. Humphrey (recalled)	54	34
Montgomery Waddell	55	35

	Original.	Print.
Further evidence—Continued.		
Testimony of William Chalmers	62	39
H. P. Von Nostitz	64	41
John Zimmermann	65	42
Harry Manley	69	44
Otto Fix (recalled)	72	46
John H. Lorrimer	73	47
Harry Bernstein	78	50
Otis L. Humphrey (recalled)	82	53
Otto Fix	82	53
David Nussbaum	84	54
Albert Eckstein	86	56
Lionel F. Straus	94	60
Emil Roehrig	101	65
Lionel F. Straus (recalled)	105	67
Ludwig Littauer	105	67
Adolph Keller	109	70
Louis Robison	113	72
Alexander King	119	77
Henry W. Schloss	121	78
E. C. Pennal	124	80
Harry Manley	126	80
Joseph A. Deghuee	129	83
Siegmund Klein	143	92
Wilton G. Berry	144	92
Otis L. Humphrey	152	98
Edward W. France	156	100
Isidore Katzenberger	159	102
Importer's Exhibit 114. Chemical analysis	161	103
Opinion, Hough, J	164	104
Judgment of affirmance	166	105
Allowance of appeal	167	106
Assignment of errors	169	107
Bond	171	108
Citation	173	109
Clerk's certificate	174	109
Opinion by Ward, J	175	110
Judgment	177	111
Clerk's certificate	179	111
Stipulation as to return to writ of certiorari	180	112
Return to writ of certiorari	181	112
Writ of certiorari	182	112

a United States Circuit Court of Appeals for the Second Circuit.

ALBERT ECKSTEIN, APPELLANT,
vs.
THE UNITED STATES, APPELLEE. } 4335.

Transcript of record, appeal from the Circuit Court of the United States for the Southern District of New York.

Printed under the direction of the clerk.

1 *Petition.*

United States Circuit Court, Southern District of New York.

ALBERT ECKSTEIN
vs.
THE UNITED STATES. } Suit No. 4335.

To the honorable, the United States Circuit Court for the Southern District of New York:

Your petitioner, having complied with the statutes in such case made and provided, and being dissatisfied with the decisons of the Board of United States General Appraisers made within thirty days immediately preceding the date hereof in each of the matters set forth and refered to in the annexed Schedule A, which is hereby made a part hereof, as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, respectfully prays that the said Circuit Court review the questions of law and fact involved in said decisions, and for that purpose prays that an order be entered requiring the said Board of Appraisers to return to said Circuit Court the record and evidence taken by them, together with a certified statement of the facts involved in each of the said matters and their de-
2 cisions thereon. And your petitioner also prays for such other or further orders or relief in the premises as the statutes provide or to the court shall seem just.

The particulars of the errors of law and fact involved in said decisions of said Board of Appraisers of which your petitioner complains are set forth in the annexed Schedule B, which is hereby referred to and made a part hereof.

Dated New York, July 14th, 1906.

ALBERT ECKSTEIN, *Petitioner.*
By COMSTOCK & WASHBURN,
Attorneys, 56 Pine st., New York City.

SCHEDULE A.

The following are the importations and entries covered by this proceeding, with the dates thereof, and with such other data as are convenient for purposes of identification:

Entry No.	Vessel.	Protest No.	Date of decision.
204294	Kr. W. D. Grosse	146247-28614	Jun. 22, '06
214262	Blucher	147635-29495	"
226430	Moltke	150109-30144	"
237461	K. W. D. Crosse	151090-567	"
236145	Hamburg	151721-1530	"
261492	Moltke	153897-3337	"
262473	K. W. D. Grosse	154735-2944	"
267726	Deutschland	154736-3135	"
261493	Moltke	155151-3939	"
25617	K. W. D. Grosse	159899-6435	"
16361	Pennsylvania	162569-9311	"
41813	Blucher	163568-9308	"
58864	Kr. Wilhelm	164293-10943	"
80250	K. Wilhelm II	167380-13003	"
68842	K. W. D. Grosse	167564-12174	"
93083	Kr. Wilhelm	168259-14254	"
97102	K. W. D. Grosse	169796-14516	"
109534	Deutschland	169797-15418	"
102148	Kr. Wm. II	171393-14706	"
109533	Deutschland	171394-16748	"
199090	Deutschland	180288-23192	"
184253	Pennsylvania	184051-25269	"
195386	Neckar	184751-26704	"
242972	Kr. Wm. II	186064-27302	"
253527	Kron. Wilhelm	187489-384	"

3 SCHEDULE B.

The Board of United States General Appraisers has confirmed the action of the collector of the port in assessing and exacting duty at 30% ad valorem on certain artificial horsehair, thereby making errors of law and fact:

1. In deciding that the protests did not comply with the requirements of section 14, act of June 10, 1890.

2. In deciding that the merchandise was properly dutiable at 20% ad val. under section 6, tariff act of July 24, 1897.

3. In not deciding that the merchandise was properly dutiable, either directly or by similitude, under par. 302, tariff act of July 24, 1897, at the appropriate rate according to number and condition, under the protests.

4. In not sustaining the protests in the foregoing particular.

(Endorsed:) U. S. Circuit Court, Southern District, New York. Filed July 16, 1906. John A. Shields, clerk.

4 *Order.*

At a stated term of the United States Circuit Court for the Southern District of New York, held in the United States court and post-office building in the city of New York, on the 14th day of July, 1906.

Present: Hon. E. Henry Lacombe, United States circuit judge.

ALBERT ECKSTEIN
vs.
THE UNITED STATES. } Suit No. 4335.

Upon reading and filing the annexed petition, and upon motion of Comstock & Washburn, attorneys for the petitioners, it is

Ordered, that the Board of United States General Appraisers sitting at the port of New York return to this court the record and the evidence taken by them in each of the matters set forth and referred to in the annexed Schedule A, which is hereby made a part hereof, together with a certified statement of the facts involved and their decisions thereon.

Dated, New York, July 14th, 1906.

E. H. LACOMBE,
United States Circuit Judge.

5 *Bond for costs.*

Know all men by these presents that I, William J. Moulton, am held and firmly bound unto the United States of America in the sum of one hundred dollars, to be paid to the United States of America; for the payment of which, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally by these presents.

Sealed with my seal and dated the 14th day of July, in the year of our Lord one thousand nine hundred and six.

Whereas Albert Eckstein has applied to the United States Circuit Court of Appeals for the Second Circuit for a review of the decision of the United States Circuit Court for the Southern District of New York as to the questions of law and fact involved in certain decisions of the Board of United States General Appraisers.

Now, therefore, the condition of this obligation is such that if the above-named Albert Eckstein shall prosecute said proceedings with effect and pay all damages and costs which shall be awarded against him therein if he shall fail to make said proceeding good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

[SEAL.] W. J. MOULTON.

Sealed and delivered and taken and acknowledged this 11th day of July, 1906, before me

HENRY J. RODE,
Notary Public, Kings County.

Certificate filed in N. Y. County.

6 UNITED STATES OF AMERICA,
Southern District of New York, ss.

William J. Moulton, being duly sworn, deposes and says that he does business in the Southern District of New York, in the city of New York, and that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

W. J. MOULTON.

Sworn to this 11th day of *of* July, 1906, before me.

HENRY J. RODE,
Notary Public, Kings County.

Certificate filed in N. Y. County.

This bond approved as to form and amount and sufficiency of surety.

Dated New York, July 14th, 1906.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) U. S. Circuit Court, Southern District, New York. Filed July 14, 1906. John A. Shields, clerk.

7 *Return.*

United States Circuit Court, Southern District of New York.

ALBERT ECKSTEIN
vs.
THE UNITED STATES. } Suit 4335.

On application for review of a decision of the Board of United States General Appraisers.

NEW YORK, *Sept. 25, 1906.*

In response to the order of the court, said board hereby returns, as given below, the record in the above-entitled matter, and certifies that a complete statement of the facts involved in the case, together with the decision of the board, is embraced therein, and that no other facts were ascertained by said board than such as are thus shown.

Specifically, the return comprises:

(1) Importer's protest 146247 and the report of the collector of customs thereon.

(2) The other protests described in the importer's petition and the collector's reports, enclosed in an envelope herewith.

(3) A transcript of the testimony taken before the board.

(4) A copy of the decision of the board, G. A. 6387 (T. D. 27442).

The exhibits mentioned in said testimony are included in the record returned in Dieckerhoff v. United States, suit 4333.

For further evidence considered by the board, the court is referred to the record returned in said Dieckerhoff case, suit 4333.

I. F. FISCHER,
W. B. HOWELL,
MARION DE VRIES,
Board of U. S. General Appraisers.

8 *Protest No. 146247.*

28614

NEW YORK, *Dec. 3, 1904.*

Hon. COLLECTOR OF CUSTOMS,
Port of New York.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties, and your decision assessing duty at 30% ad val., or other rate or rates, on artificial horsehair, covered by entries below named. The reasons for objection, under the tariff act of July 24, 1897, are as follows:

Said merchandise is not dutiable, either directly or by similitude, under par. 385. It is not silk and is not similar to silk either in material, quality, texture, or use. It is dutiable by similitude to cotton thread or yarn, under par. 302 at the rate according to number and condition or under sec. 6 at 10% or 20% ad val.

The parts of the law referred to in above claims are the only, or the most apt and specific, ones for said merchandise or articles and should control the classification. The above claims severally and collectively are alternately made under the paragraphs or sections referred to, both directly and by similitude and component material or otherwise as provided in sec. 7, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning or usage, controlling force of chief use and chief component in value, and by all statutory, judicial, or other rules for the construction of the law, hereby reserving all questions of law and fact and giving notice that this protest is intended to apply to each and all future importations of the same or similar merchandise or
9 articles and the payments thereon and to all merchandise or articles included in the entries covered hereby.

The offer is hereby made to furnish evidence to the Board of United States General Appraisers, on reasonable notice from them, of the facts involved and in support of the contentions herein.

The excess is paid under compulsion, and to obtain and retain possession of said merchandise or articles, and you and the Government are held liable for the same, and a demand for the repayment thereof and a readjustment or liquidation of the entries in accordance with the above claims is hereby made. The marks and numbers below given are given under duress and without prejudice.

Entry No.	Vessel.	Entered.	Bond No.	Liquidated.	Marks & Nos.
204294	Kaiser Wilhelm der Grosse.	Oct. 5-04	c	Nov. 26-04	V. K. F. and various, as per entries and invoices.

Respectfully,

ALBERT ECKSTEIN,
By ALBERT COMSTOCK, *Attorney*,
Attorney and Counsellor at Law,
56 Pine street, New York City.

(Endorsed:) Custom House, New York. Dec. 3, 1904. Received.

10 *Report of collector.*

Letter to General Appraisers submitting protest.

146247

UNITED STATES CUSTOMS SERVICE,
PORT OF NEW YORK,
Collector's Office, Dec. 28th, 1904.

BOARD OF U. S. GENERAL APPRAISERS,
At Port of New York.

GENTLEMEN: I submit the protest of Albert Eckstein, No. 28614, against the assessment of duty by this office at the rate of 30% ad valorem on certain "artificial silk yarn," imported by him in the "Kaiser Wm. der Grosse," Oct. 5, 1904.

An inspection of the invoice shows that the merchandise in question was returned by the appraiser as "silk yarn, 30%."

Duty was assessed thereon at 30% ad valorem under the provisions of par. 385, act of July 24, 1897. Note G. A. 4939, 5081, and 5257.

I have to report that the claimant has complied with the requirements of section 14 of the act of June 10, 1890, so far as lodging protest within the statutory time.

The naval officer concurs in the decision of this office.

The entry and invoice covered by the above protest are inclosed herewith.

Respectfully,

J. J. COUCH,
Special Deputy Collector.

3 inclosures.

(Endorsed:) Received by Board of U. S. General Appraisers, Dec. 29, 1904.

11 *Testimony.*

Before the Board of U. S. General Appraisers. Near silk.

In the matter of the protests of Albera Eckstein, Nos. 146247, 147635, and 150109.

NEW YORK, *February 21, 1905.*

Before General Appraiser Howell.

Appearances: B. A. Levett, esq., assistant counsel for the Government; George J. Puckhafer, esq. (Comstock & Washburn), for the importer. George W. Magee, stenographer.

SIEGMUND KLEIN, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. PUCKHAFER:

Q. What is your connection with the firm of Albert Eckstein?

A. Confidential man.

Q. How long have you been employed in that capacity?

A. Seven years.

Q. What is the business of Albert Eckstein?

A. Importer of yarns.

Q. Are you familiar with the invoices covering imported goods coming to that firm?

A. I am.

Q. Are you familiar with the merchandise covered thereby?

A. I am.

Q. I ask you to look at the invoice contained in protest 146247 and ask you if you are familiar with the merchandise covered by that invoice?

12 A. Yes; I am.

Q. Have you a sample of the merchandise represented by that?

A. Yes.

Q. Please produce it.

(Witness produces sample.)

Q. Does that sample represent the merchandise in all particulars?

A. It does.

Q. Did you look at the invoices covered by the remaining two protests?

A. I did.

Q. Can you say whether or not the sample which you produce likewise represents the merchandise?

A. On either one of these two there is a shipment of skein goods, same as the article in front of me which I did not bring along.

Q. Same as Exhibit 1, protest 138312?

A. This particular sample.

Q. Can you state whether the sample first, just referred to, represents merchandise in all particulars?

A. It does.

(Counsel for the importers offers sample in evidence.)

Q. Where did you get the sample?

A. From the regular goods; are imported right along.
Q. Do you import more than one quality?
A. No.
Q. More than one thickness?
A. It does come over occasionally in somewhat heavier size.
Q. Is there anything on the invoice to show what size is covered by that?
A. Not on this particluar invoice.
13 Q. How are you able to state that it is the same size?
A. This particular sample I have submitted is a medium quality; the goods invoiced on this invoice are also medium quality.
Q. Medium quality, all of the same thickness?
A. Medium size.
Q. Always the same size. Does it only come one medium size?
A. .Only one.

By Mr. LEVETT:

Q. You said that some of the merchandise is the same as Exhibit 1, protest 138312. Do you know the lea of the Exhibit 1, here?
A. I do not.
Q. Do you know how Exhibit 1 is made?
A. No; I do not.
Q. How are you able to state that your merchandise is the same as that?
A. The goods are coming in in the same quality and the same appearance all the time.
Q. You do not know the quality of that?
A. It is an article of the run and appearance of it.
Q. Your own goods might be a different lea?
A. No; because they come from the same factory.
Q. Does it not make different lea?
A. No.
Q. You do not know that it does not?
A. I know.
Q. How?
A. Because the goods are all of the same quality.
Q. How do you know he does not make different sizes and ship them to other dealers?
A. That is so known in trade; this particular manufacturer has made nothing but one quality of goods.
Q. Have you ever been over to see?
A. I have not.
14 By General Appraiser HOWELL:
Q. What do you pay for that article represented by Exhibit 1 in protest 138312?
A. Twenty-eight marks.
(Sample offered in evidence, marked "Exhibit 1, protest 146247, February 21, 1905.")
Counsel for the importer request suspension under suit 3346.
Agreed to by counsel for the Government.

Board 2. U. S. General Appraisers.

In the matter of protests of Albert Eckstein, Nos. 151090 and 151721.

NEW YORK, N. Y., *May 5, 1905.*

Present: Hon. William B. Howell, general appraiser.

Appearances: George J. Puckhafer, for the importer; Benjamin A. Levett, for the Government.

DAVID W. LEE, a witness on behalf of the importers, having been duly sworn, testified as follows:

By Mr. PUCKHAFER:

Q. What is your official position, Mr. Lee?

A. Examiner of silks.

Q. At which port, sir?

A. Port of New York.

Q. Did you examine the merchandise which is covered by this invoice, protest 151090, merchandise returned as silk yarn?

15 A. Yes, sir.

Q. Is there any sample present here, which correctly represents the merchandise returned as silk yarn?

A. That is the same as that horsehair, Ex. 1, protest 138312.

Q. Merchandise covered by protest 151721, returned as silk yarn?

A. That is covered by the horsehair, black and ecru, Exhibits 1 and 2, protest 138312.

The U. S. General Appraisers. Near silk.

In the matter of Albert Eckstein, protests Nos. 146247, 150109, 151090, 153897, 154735/6, 159899, 162569, 163568, 164293, 167380, 167564, 168259, 169796, 169797, 171393/4, 180288. Before Board 2.

Present, Fischer, G. A.

NEW YORK, *February 24, 1906.*

Appearances: Comstock & Washburn, by G. J. Puckhafer, counsel for the importer; B. A. Levett, esq., ass't counsel for the Government. G. W. M.

SIEGMUND KLEIN, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. PUCKHAFER:

Q. With what firm are you connected?

16 A. Albert Eckstein.

Q. In what capacity?

A. Confidential man.

Q. What is Albert Eckstein?

A. Importer of yarns.

Q. Among other things, do you import imitation horsehair?

A. Yes.

Q. Are you familiar with your foreign invoices?

A. Yes.

Q. And the merchandise covered by this invoice?
A. Yes.
Q. I ask you from how many firms you import artificial horsehair?
A. Two.
Q. Name them.
A. Vereinigte Kunstseidefabriken A. G., Kelsterbach a/M. Vereinigte Glanzstoffabriken A. G., Elberfeld.
Q. How many different qualities do you import from the Kunstseidefabriken?
A. One quality.
Q. How many different sizes?
A. About two.
Q. How are these sizes indicated upon your invoices?
A. Indicated as "Mittel" and "Grob."
Q. Will you please produce samples of the "Mittel"?
(Witness produces two samples, one white and one black, as representing the Mittel.)
Q. Were they taken out of the shipments in question?
A. Yes.
(Samples received in evidence and marked "Exhibits 1 and 2, respectively, protest 146247, etc., February 24, 1906.")
17 Q. Will you please produce samples of the "Grob"?
(Samples produced.)
Q. Were these taken from the importations?
A. Yes.
(Samples (2) offered in evidence and marked "Exhibits 3 and 4, respectively, protest 146247, etc., February 24, 1906.")
Q. Will you produce a sample of the merchandise from your Elberfeld concern invoiced as 300 denier?
(Sample offered in evidence, marked "Exhibit 5, protest 146247, etc., February 24, 1906.")
Q. Will you please produce a sample of the merchandise from your Elberfeld concern invoiced as 350 denier?
(Sample offered in evidence and marked "Exhibit 6, protest 146247, etc., Feb. 24/06.")
Q. Do the samples, Exhibit 5 and Exhibit 6, represent the only sizes you import from the Elberfeld concern?
A. They do.

By Mr. LEVETT:

Q. You do not know how these are made, do you?
A. No; I do not.

By Mr. PUCKHAFER:

Q. I'll show you the various invoices covered by the protests and ask you to indicate which of the exhibits represented the merchandise covered thereby.
Q. Protest 146247?
A. Exhibit 1.
Q. Protest 150109?
A. The Mittel raw Exhibit 2 and the Grob Exhibit 4.

Q. Protest 151090?

18 A. All Exhibit 2.

Q. Protest 153897?

A. Exhibit 1.

Q. Protest 154735?

A. Mittel raw Exhibit 2 except that merchandise covered by part of this invoice is wound on a spool.

Q. And the second item on the invoice, what sample represents that?

A. Exhibit 3.

Q. Protest 154736?

A. First item, Exhibit 3; balance of the invoice, Exhibit 2.

Q. Protest 159899?

A. First two items, Exhibit 2; balance, Exhibit 3.

Q. Protest 162569?

A. Exhibit 2.

Q. Protest 163568?

A. First item, Exhibit 2; second item, Exhibit 3; third item, Exhibit 2, wound on a spool.

Q. Protest 164293?

A. Exhibit 2.

Q. Protest 167380?

A. Exhibit 2.

Q. Protest 167564?

A. Exhibit 2.

Q. Protest 168259?

A. Exhibit 2.

Q. Protest 169796?

A. Exhibit 2.

Q. Protest 169797?

A. One item, Exhibit 2, on spools and the other item, Exhibit 1.

Q. Protest 171393?

A. Exhibit 2.

Q. Protest 171394?

A. Exhibit 2.

Q. Protest 180288?

A. First two items, Exhibit 2, wound on spools, and the balance is Exhibit 1.

19 *Board's decision.*

(T. D. 27442—G. A. 6387.)

UNITED STATES GENERAL APPRAISERS,
New York, June 22, 1906.

In the matter of protests 176565, etc., of E. A. Magnim et al. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2.

FISCHER, General Appraiser: The merchandise here in question consists of so-called artificial horsehair. Duty was assessed thereon at

the rate of 30 per cent ad valorem under the provisions of paragraph 385 of the tariff act of 1897, as silk yarn, by similitude. The importers claim that the merchandise is dutiable properly "by similitude to cotton thread or yarn under paragraph 302 at the appropriate rate according to number and condition, or under section 6 at 10 per cent or 20 per cent ad valorem." Some of the protests mentioned other rates, but they need not be referred to further.

The protests do not specify which rate of duty is applicable under paragraph 302, nor do they describe particularly the kind of cotton yarn to which the merchandise is claimed to be similar, but merely claim, as noted above, that it is dutiable at an appropriate rate according to count and condition. The count and condition of the merchandise could not be determined by the collector from the protest, invoice, entry, or any other paper that was before him. Paragraph 302 is quite long; it covers all the cotton yarns known to commerce, enumerating many sizes, qualities, and conditions, and we are of opinion that such a protest does not comply with the requirements of the statute (sec. 14, act of June 10, 1890; 26 U. S. Stat., 131). Note Boker v. United States (T. D. 27192), affirming Boker v. United States (140 Fed. Rep., 115; T. D. 26451), and G. A. 5879 (T. D. 25892); also G. A. 6360 (T. D. 27328).

20 The importers insist that the protests are sufficient because the collector could have ascertained by an investigation just what the specific claim relied upon was. If such a protest is good, then any protest, however vaguely worded, is good, for an investigation would in the end disclose the exact claim relied on. Under such a construction an importer would be required to state merely that he claims the merchandise to be dutiable at a rate different from that assessed and await an "investigation" to make his exact claim known. A man who buys and imports goods surely knows what is the character of the goods, and if he is unable so to state in his protest it can not be expected that a stranger to the transaction—the collector, for instance—can tell. Since he can not find in the protest that which it is necessary for him to know in order to correct any error that may have been committed, it is obvious that such a protest does not discharge the most important function of a protest, namely, to "apprise the collector of the objections entertained by the importer, before it should be too late to remove them, if capable of being removed." The trend of all later court and board rulings is to hold that the province of the protest is to set forth specifically the claim of the importer, so that the officer charged with assessing duty on importations may have an opportunity of correcting the liquidation, if he desires to do so. The claim should be explicit enough to enlighten those who have to do with corrections and have the power to order them.

It will be observed that the particular in which the protests before us are criticised relates only to a matter of fact—the fact of the condition and number of the yarn—a fact, furthermore, that is peculiarly

within the knowledge of the importers, but which could not, from the nature of the case, be known to the collector.

On the merits of the issue, however, the board is of the opin-
21 ion that the merchandise in question is dutiable properly under section 6 at the rate of 20 per cent, as alternatively claimed in the protests. In G. A. 5257 (T. D. 24155) goods of this character were held to be dutiable as silk yarn by similitude, but that ruling was finally reversed by the Circuit Court of Appeals in the case reported in T. D. 27028 as Von Bernuth v. United States and the claim of the importers that they were dutiable as cotton yarn by similitude was sustained.

The importers now come forward and by voluminous testimony show that this so-called artificial horsehair is wholly dissimilar to cotton yarn in construction, texture, and use. Cotton yarn, by the testimony before us, is an elongated strand made up of short staples and it must have at least 12 twists to the inch to be what is known as a yarn. Artificial horsehair has no staples and no twist whatever. It further appears that artificial horsehair is used for the same purposes as genuine horsehair, namely, in the manufacture of braids and trimmings. Inasmuch, however, as horsehair is on the free list, the similitude clause can not be applied, and it follows that the only proper classification for the article is under section 6 as an unenumerated manufactured article at 20 per cent.

The evidence referred to above was not before the court in the Von Bernuth case, and is presented now for the first time.

This claim in the protests is sustained and the decisions of the collector modified as to the artificial horsehair included in the importations affected and enumerated in Schedule A. The importers, having abandoned all claims as to so-called artificial silk yarn comprised in some of the importations, the same are overruled.

I. F. FISCHER,
W. B. HOWELL,
Board of U. S. General Appraisers.

(Endorsed:) U. S. Circuit Court. Filed Sep. 26, 1906. Southern District New York. John A. Shields, clerk.

22 *Stipulation.*

United States Circuit Court, Southern District of New York.

DIECKERHOFF, RAFFLOER & Co. *vs.* UNITED STATES.	Suit No. A4333.
R. F. DOWNING & Co. *vs.* UNITED STATES.	Suit No. A4334.

ALBERT ECKSTEIN *vs.* UNITED STATES.	Suit No. 4335.
M. GOLDBERG *vs.* UNITED STATES.	Suit No. 4336.
G. HIRSCH'S SONS *vs.* UNITED STATES.	Suit No. 4337.
MOELLER & LITTAUER *vs.* UNITED STATES.	Suit No. 4338.
G. ROBINSON & SON *vs.* UNITED STATES.	Suit No. 4339.
23 STERN & STERN *vs.* UNITED STATES.	Suit No. 4340.
F. A. STRAUS & CO. *vs.* UNITED STATES.	Suit No. 4341.
R. F. DOWNING & CO. *vs.* UNITED STATES.	Suit No. 4390.
ALBERT ECKSTEIN *vs.* UNITED STATES.	Suit No. 4391.

It is hereby stipulated and agreed by and between counsel for the appellants and the United States that the word "confirmed" appearing in the first line under Schedule B of the petition and order in the above entitled cases may be regarded as a manifest clerical error, and the word "reversed" shall be read in lieu thereof.

Dated New York, Oct. 10th, 1907.

COMSTOCK & WASHBURN,
Attorneys for Appellants.
HENRY L. STIMSON,
Attorney for Appellee.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Oct. 10, 1907. John A. Shields, clerk.

24 *Stipulation.*

United States Circuit Court, Southern District of New York.

DIECKERHOFF, RAFFLOER & Co. *vs.* UNITED STATES.	Suit No. A4333.
R. F. DOWNING & Co. *vs.* UNITED STATES.	Suit No. A4334.
ALBERT ECKSTEIN *vs.* UNITED STATES.	Suit No. 4335.
M. GOLDBERG *vs.* UNITED STATES.	Suit No. 4336.
G. HIRSCH'S SONS *vs.* UNITED STATES.	Suit No. 4337.
MOELLER & LITTAUER *vs.* UNITED STATES.	Suit No. 4338.
G. ROBINSON & SON *vs.* UNITED STATES.	Suit No. 4339.
25 STERN & STERN *vs.* UNITED STATES.	Suit No. 4340.
F. A. STRAUS & Co. *vs.* UNITED STATES.	Suit No. 4341.
R. F. DOWNING & Co. *vs.* UNITED STATES.	Suit No. 4390.
ALBERT ECKSTEIN *vs.* UNITED STATES.	Suit No. 4391.

It is hereby stipulated and agreed by and between counsel for the appellants and the United States that the merchandise which was the subject of the case of Von Bernuth vs. United States (T. D.

27028; 146 Fed. Rep., 61) was not composed of nor known as artificial horsehair.

Dated New York, Oct. 10th, 1907.

COMSTOCK & WASHBURN,
Attorneys for Appellants.

HENRY L. STIMSON,
Attorney for Appellee.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Oct. 10, 1907. John A. Shields, clerk.

26 The U. S. General Appraisers. Near silk, Cotton Yarn, etc.

In the matter of Diecckerhoff, Raffloer & Co. et al. Protests 147629/31 of Dieckerhoff, Raffloer & Co., and 163104/5, 187077, and 188221 of Hardt, von Bernuth & Co.

NEW YORK, N. Y., *March 22, 1906.*

Before Board No. 2.

Present: DeVries, Fisher, and Howell, general appraisers.

Appearances:

For the importers: Messrs. Comstock & Washburn, attorneys for Dieckerhoff, Raffloer & Co., by A. H. Washburn, esq., of counsel. Messrs. Brooks & Brooks, attorneys for Hardt, von Bernuth & Co., by F. W. Brooks, sr., esq., of counsel.

For the Government: B. A. Levett, esq., assistant counsel for the Treasurery Department. J. G. H.

Mr. Brooks requested that this proceeding be devoted entirely to what is ordinarily called soft finish goods, and that the horsehair goods may be considered on a separate occoasion.

Mr. Washburn stated that he is not prepared to take up the horsehair issue to-day.

Mr. Levett stated that he had no objection to have this case
27 postponed for the purpose of having counsel for the importers put in what testimony they desire after finishing up to-day, but that he will insist on taking up the horsehair cases to-day, for the reason that in the original cases they were taken up together, and the court presumably passed on both; and for the further reason that one of his most important witnesses leaves to-morrow for Europe. He therefore requested that both cases be taken up involving both classes of merchandise.

Mr. Brooks stated that practically the only question before the board to-day, as he understands it, is whether this article is a ply yarn or a single yarn, and on that proposition importers can stand on the attitude of the appraiser and the collector of the port of New York, because they both agree that these imitation horsehair yarns are single yarns; that the importers are perfectly satisfied with the rate of duty assessed, so that, so far as the importers are concerned, there is

no issue on that subject; if the counsel for the Government desire to raise that issue that is a different proposition; that, inasmuch as the importers who he (Mr. Brooks) represents have no controversy with the Government on the horsehair question, it seems unnecessary to go into the question at all.

General Appraiser FISCHER. These interests are so interwoven that it is best for the Government to try them as one proposition. It will save recalling witnesses and questioning them over and over again on the same proposition.

Mr. BROOKS. On that view of the case I submit here a few protests which contain horsehair. (Referring to protests of Hardt, von Bernuth & Co., Nos. 187077 and 188221.)

Mr. Levett requests that protests 163104/5 be also considered.

28 Mr. Washburn asks that protests 147629, '30 and '31, of Dieckerhoff, Raffloer & Co., be also selected for hearing in connection with the others. Two of them are horsehair, and one of them is artificial silk.

Mr. LEVETT. In order to simplify the record counsel have agreed, for the purpose of these cases, that the following may be considered as proved:

That the commercial number of single cotton yarns is the number of hanks of 840 yards each of such yarn contained in one pound, and that the commercial number of cotton yarns which have been advanced beyond the condition of singles by grouping or twisting two or more single yarns together is the number obtained by multiplying the number of hanks of 840 yards each of such yarn contained in one pound by the number of single yarns grouped or twisted together to form the yarn in question.

Mr. LEVETT. I shall call the attention of the board also to the definition of a denier which is used in regard to silk, which has been used on the other side in regard to this artificial silk yarn, contained in the pamphlet labelled "Tables of Comparative Weights, Measures, Specific Gravity, etc., for use of Importers, Manufacturers, and Dyers of Textile Fibres and Fabrics," issued by the New York Silk Conditioning Works, and marked "Ex. 4, 98110-F, Feby. 8, '06." The definition in question is contained on page 6, under the head of "Continental net silk scale," and reads as follows: "The hank is 400 French ells=476 metres=520 yards. 533 1/3 deniers make 1 oz. avoirdupois. The number of deniers that one such hank weighs is the count of the silk."

Mr. LEVETT (continuing). Now, in the convertion of 840 yards of cotton—or at least a hank which measures 840 yards to the pound of cotton—would be in deniers 5282.333, so that to get the

29 number of cotton by transposing the deniers we get it by taking the proportion of one to 5282.333. That, of course, assumes that the cotton yarns are single.

W. M. CROWE, a witness called on behalf of the importers, being duly sworn, testified as follows:

By Mr. BROOKS:

Q. Please give your name in full to the stenographer.

A. W. M. Crowe.

Q. What is your business, Mr. Crowe?

A. Dealer in cotton yarns and silk yarns, and yarns generally.

Q. With what firm are you connected?

A. Hardt, von Bernuth & Co.

Q. Where is their place of business?

A. 477 Broome street.

Q. For how long have you been engaged in the business of dealing in cotton yarns?

A. Eighteen or twenty years.

Q. Are you familiar with the goods which are the subject of the protests before the board to-day?

A. Originally?

Q. Yes.

A. Yes.

Q. Please look at the article which I hand you, and state if you know what it is.

A. This is so-called lustro artificial silk.

Q. Is that of the kind which you have imported heretofore which is covered by the protest here to-day?

A. Yes, exactly.

Q. That is the protest referred to what is called the soft finish?

30 A. Yes; this is the soft finish.

Q. That does not in any way represent what is called the imitation horsehair yarn?

A. No.

(Mr. Brooks offers sample referred to in evidence, which is received and marked "Exhibit 1.")

* * * * * * *

Mr. Crowe, please listen to the definition of yarn which I will read to you from the Century Dictionary, which was approved by the Board of General Appraisers in its decision No. 3768, and state if that definition agrees with what is considered a yarn by those who deal in such articles, and have dealt in them for at least ten years past. The definition is as follows: "Originally, thread of any kind spun from natural fibres, vegetable or animal, or even mineral; now, more usually thread prepared for weaving as distinguished from sewing thread of any sort." I will add one more phrase, which I think was omitted in G. A. 3768—"The term is also applied to stout woolen thread used for knitting, etc." Does that definition describe what is generally understood as a yarn by those who deal in them, and have dealt in them for at least ten years past?

A. The definition is accurate according to my mind as to what a yarn is.

Q. Now, what is understood in the trade with which you are connected, and was so understood in 1896, and since that time by the phrase "ply cotton yarn?"

A. Well, it implied two or more threads twisted or doubled together.

Q. When you speak of two or more threads twisted or doubled together, do you use the word "thread" as a synonym for yarn?

(Objected to as leading.)

31 (Objection sustained.)

Q. When you speak of a thread as being one of the constituents of a ply yarn; what do you mean by a thread?

A. Single thread of yarn.

Q. How do those who deal in yarns ascertain whether a particular article is a ply yarn or single

A. How do they—I don't catch that.

Q. How do those who deal in yarns ascertain whether a particular article is or is not a ply yarn?

A. Well, they can examine the yarn carefully, and untwist it.

Q. What do they discover if they untwist it?

A. They discover singles.

Q. What relation do singles bear to ply yarn?

A. What relation, do you mean?

Q. Yes.

A. Well, they constitute the ply yarn.

* * * * * * *

By Mr. LEVETT:

Q. I am speaking of each individual filament that goes to make up the yarn of Exhibit 1. Now, can you conceive that that might be cotton?

A. The whole combination as it is there?

Q. Those single filaments there?

A. Yes; cellulose of cotton, I assume it is.

Q. We have assumed that this single filament is cotton. Take this single filament, and bearing in mind that it is cotton, is it cotton yarn? Here we have a filament of cotton, which runs possibly a mile in length; is it a cotton yarn?

A. I say it is not a yarn.

Q. You would say, then, that even if this were cotton, and ran along for a hundred, two hundred, or a thousand miles, it would not be a yarn?

A. It could not be a single cotton yarn, to my mind—the filaments.

32 Q. Would it be a yarn at all?

A. It could not be a yarn, to my mind.

Q. A single filament, you say, would not be a yarn?

A. Would not be a yarn; a single yarn.

Q. Even if it were cotton?

A. Even if it were cotton, according to my opinion.

Q. So, if you had a filament as thin as that, made of cotton, it could not be a yarn, even if it were as long as this?

A. I don't say that, because any filament of so-called cotton yarn has peculiar characteristics. It has a twist in it. It has been treated and manipulated.

Q. We are assuming that this is made of cotton; now, then, being made of cotton we have a cotton filament of a great length; would you consider that this filament, which is made of cotton according to our assumption, is a cotton yarn?

A. No; not a yarn. I don't consider it a single yarn.

Q. So that if you had a filament as fine as that made of cotton it would not be a cotton yarn?

A. Was that, if you had a filament of cotton yarn?

Q. Yes.

A. We are talking about the ordinary cotton staple now?

Q. No; we are assuming that if that filament or thread is made of cotton, would it be a cotton yarn?

A. Not according to my idea of a single cotton yarn.

Q. I did not say a single; would that be a cotton yarn if it were made of cotton?

A. No; not according to my opinion.

Q. Even if it were made of cotton, and ran along for a thousand miles?

A. Just so.

33 By General Appraiser FISCHER:

Q. Why not?

A. For this reason, sir. I have always known what a single cotton yarn is in the finest as well as the coarsest. It is impossible to have a single cotton yarn without a twist. It must have that characteristic, and have strength sufficient to be twisted to be woven or used as warp.

* * * * * * *

By Mr. LEVETT:

Q. Mr. Crowe, what is the chief use of Exhibit 1?

A. Principally, it has been used for braids and trimmings.

Q. Do you use it yourself for that purpose?

A. No. It is also used for weaving.

Q. Do you know whether cotton yarns are used for trimmings and braids?

A. I believe they are.

Q. Do you know whether single cotton yarns are used in braids?

A. Really I don't know about that.

Q. So far as your knowledge goes won't you state that the yarns which are used in braids are generally ply yarns as far as cotton is concerned?

A. I think they generally are ply yarns.

Q. Now, you gave your definition of a ply yarn as one which had two or more threads twisted or doubled together?

A. Yes.

Q. And when you were asked what you meant by a thread, you said "a single thread of yarn;" that is correct, is it?

A. Yes; I consider they are more or less synonymous terms.

Q. You say that single threads and single yarns are synonymous terms in the trade?

A. More or less.

34 * * * * * * *

Q. Now, Mr. Crowe, I wish you would look at this article which I hand you, and state what it is?

A. It is a cotton yarn.

Q. Is it a single?

A. It is a single. [Witness examines sample.] It is a single yarn.

Q. That is made by twisting fibres together, is it?

A. Yes, sir.

Q. What do you mean by a fibre in the trade? It is used in the cotton trade, isn't it, the term "fibre?"

A. Well, we have not much to do with the term fibre. It is hard to give an exact definition of a fibre. I consider that our cotton has the characteristics of fibre.

Q. Do you use the term "staple" in the cotton yarn business?

A. Yes. I don't deal in that raw staple.

Q. What do you understand by the term "staple?"

A. It means the quality of the cotton, according to the length of the cotton.

Q. The staple is the little fibre that goes to make up the cotton yarn?

A. Yes, sir.

Q. So that when you get a single yarn, and untwist it, you get down to the staple, don't you?

A. Yes; you do.

Q. Those are also spoken of as fibres?

A. Yes, sir.

Q. How long would those staples run?

A. I don't know. I suppose they run—the shortest—I cannot tell exactly; up to a couple of inches I should think, possible a little shorter, possibly a little longer.

Q. Would not be over two inches?

A. I don't know anything about it. I am not an authority on such things.

35 (Sample referred to is offered in evidence by the Government as Illustrative A.)

* * * * * * *

Q. You spoke of artificial horsehair as yarn?

A. Artificial horsehair is—let me see. It is generally spoken of as horsehair, but I don't know whether we have ever used the term "yarns" specially as yarns of horsehair. The term is "horsehair."

Q. As far as all of these samples of artificial silk are concerned, you did not use the term "yarn" in connection with them prior to July 24th, 1897, did you?

A. 1897. No, I don't think we did. We did not know anything about them.

* * * * * * *

Q. What is a single cotton yarn?

A. Well, a single cotton yarn is, to my mind, is a yarn that has considerable amount of twist in. It must have that so that the fibers can cohere together, and they can be used for some purpose, whatever that purpose may be?

Q. If you were able to produce that fiber to any length in an untwisted condition, would that by a yarn itself?

A. If the fiber in itself was of sufficient strength in itself to be used by itself, and then twisted, I agree with you that you would have to admit that that would be considered a ply yarn.

Q. Then necessarily a double need not be made up of a number of twisted yarns, but each is dependent on its own characteristic?

A. To my own mind each individual is dependent on its own characteristic.

Q. You said that one of these single filaments would not have any commercial value?

A. Not to my mind in that sample.

* * * * * * *

36 By Mr. BROOKS:

Q. Do you wish the board to understand that the idea of a ply yarn by those who deal in it as you do, is that it is made up of single yarns which are not twisted?

A. It is impossible to have a ply yarn with a single yarn that is not twisted, to my mind.

By General Appraiser FISCHER:

Q. You can not make a cotton yarn except by twisting each yarn, can you?

A. Not to my mind.

Q. The vegetable fiber grows so short that it is impossible to make anything out of it without twisting it together.

A. That is my opinion.

Q. So that they have produced artificially through tubes a lengthy article which is in itself complete, requiring not the spinning which is necessary for short staple cotton?

A. Yes.

By Mr. LEVETT:

Q. Mr. Crowe, if you took a number of these cotton staples and led them along in a continuous length, and were able to fasten them together by glue or paste or something else, without twisting them, would you consider that finished product a cotton yarn?

A. Without twisting?
Q. Yes.
A. No; I would not.

ROBERT BURGESS, a witness called on behalf of the importers, being duly sworn, testified as follows:

By Mr. BROOKS:

Q. What is your occupation, sir?
37 A. Treasurer of the Slater Cotton Company.
Q. And where is that located?
A. Pawtucket, Rhode Island.
Q. What is done in that mill? One moment—is that a large mill?
A. Sixty thousand spindles.
Q. How many hands are employed there?
A. About seven hundred.
Q. What is done in that mill?
A. We manufacture cotton cloth and yarn.
Q. For how long have you been engaged in the manufacture of cotton cloth and cotton yarn?
A. About twenty-eight years.
Q. I will read to you the definition of a yarn taken from the Century Dictionary, read to the last witness: "Originally thread of any kind spun from natural fibres, vegetable or animal, or even mineral; now, more usually, thread prepared for weaving as distinguished from sewing thread of any sort. The term is also applied to stout woolen thread used for knitting, etc." Please state whether that definition of a yarn agrees with what you know about yarn to be, based on your experience for the last twenty-eight years.
Mr. LEVETT. Objected to as irrelevant and immaterial. The previous witness has testified that these articles were not handled in this country at the time this dictionary was written.
(Objection overruled.)
A. I do consider it.

By Mr. LEVETT:

Q. Did you ever handle any mineral yarns?
A. Mineral yarns; no, sir.
Q. Have you handled any animal yarns besides wool and silk?
A. No.
38 Q. Have you ever handled any wool and silk yarns?
A. I have.
Q. Did you ever handle any artificial silk?
A. I have.
Q. And how long have you been handling artificial silk?
A. Not long. It is possibly ten years ago since I handled the first.
Q. How large an extent was that?
A. Not to any great extent, just a matter of experimenting with it.

Q. The artificial silk yarns really were not commercial articles here prior to 1897, were they?

A. Not as far as I know.

* * * * * * *

By General Appraiser HOWELL:

Q. Did you ever use imitation horsehair in your business?

A. We use polished cotton, and call it imitation horsehair. That is straight cotton thread polished.

Q. Mercerized?

A. Not mercerized; polished.

By Mr. LEVETT:

Q. Is that generally grouped or twisted together before you use it?

A. Both single and double. It is a regular cotton thread taken and dyed and polished.

* * * * * * *

Q. Now, are you familiar with the term "staple" as used in regard to cotton yarn?

A. Somewhat.

Q. What does it mean?

A. Fibre.

Q. And how long is it generally?

A. They run from seven-eighths of an inch to an inch and three-quarters.

39 Q. An inch and three-quarters is about as large as you have ever seen?

A. There are some freak samples that run longer than that, but in ordinary common practice an inch and three-quarters is about the longest.

OTIS L. HUMPHREY, a witness called on behalf of the importers, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. Mr. Humphrey, what is your occupation?

A. At present I am a worsted yarn salesman.

Q. And where is your place of business, and with what concern are you connected?

A. Harding, Whitman & Co., 78 Chauncey street, Boston.

Q. How long have you been connected with them?

A. About two years; a little over two years.

Q. Are you familiar with yarns of all kinds and with cotton yarns in particular?

A. I am familiar with cotton yarns in particular, and more or less familiar with most yarns used in the textile trade.

Q. You have had experience also with mineral, vegetable, and animal yarns, have you?

A. Cotton and flax yarns would be considered vegetable yarns. I have had experience with those. Woolen, worsted, and silk yarns,

I suppose, would be considered animal yarn. I have had experience with those. I have also had some experience with cloth made of asbestos, which is a mineral yarn.

Q. What other kinds of mineral yarns, if any, have you come in contact with?

A. Well, I have seen yarns made of glass, although I am not familiar with them. I have also seen what were known as tinsel yarns, where metal is twisted with a textile yarn.

40 Q. Referring to these so-called mineral yarns, are they exclusively mineral yarns, in your opinion?

A. I don't know with regard to glass; that, I think, is spun by itself; but asbestos, I think, is invariably mixed with other substance, like cotton, for added strength.

Q. Basing your answer on your theoretical and practical experience and speaking as an expert, will you define a yarn?

A. I would consider a yarn an attenuated mass of textile fibres having some twist—having sufficient twist to give it strength to be used practically.

Q. Is a yarn capable of subdivision; and if so, into what may it be subdivided?

A. A single yarn is capable of being subdivided into the fibres or filaments of which it is composed. A ply yarn is capable of being subdivided into the single yarns of which it is composed.

Q. You have used the terms "s'ngle" and "ply" yarns; what is a single and a ply yarn?

A. A single yarn is a yarn composed of fibres lying approximately straight and parallel along the axis of the yarn; these fibres having sufficient twist to give the yarn the strength required in the following processes. A two-ply yarn would be two ends of single yarn twisted together, and almost universally twisted in an opposite direction to the spinning twist. There are some exceptions, sometimes, in worsted; where they wish to give a depressed effect they give the two-ply twist the same direction as the single twist; but that might be considered a freak yarn. A three-ply yarn means three strands of single yarn.

Q. You have analyzed yarns, I presume?

A. Yes; repeatedly.

Q. What would a cross section of a yarn show?

A. A cross section of a cotton yarn would show numerous cotton fibres. A cross section of a single cotton yarn would show numerous cotton fibres.

41 Q. You have used the term "filaments" here; what do you mean by that term?

A. That term "filament" is used sometimes interchangeably with fibre. I think, to be strictly correct, the term "filament" might better be applied to a silk filament or an artificial silk filament, and the term "fibre" perhaps to a fibre of wool or flax or of cotton. There is a distinction there, perhaps, without any very great difference. The two words are used interchangeably, I have no doubt.

Q. Now, the term "thread" has been used here; will you define it as you understand it?

A. According to my understanding the same remarks apply to thread. It is a term which is very carelessly used. It is sometimes used as being synonymous with yarn. I consider that, strictly speaking, a thread is what we know as sewing thread. Thread is composed commonly of three strands of two-ply yarn. That is known as six cord. It may be composed of three strands of single yarn, but in the case of thread the double twist is commonly much more than it is in the case of ply yarn. So that, strictly speaking, I should limit the term "thread" to three plies of single yarn used for sewing purposes. Two-ply yarn is also twisted; but I will acknowledge that the term "thread" is often used where yarn would be more proper.

Q. Is a filament capable of subdivision?

A. I don't understand that it is. For instance, take a flax fibre. We have a single fibre of flax which may be pulled out of a flax yarn; and in our careless method of speaking we might call *call* at one time a yarn and at another time a filament, but if that fibre were to be put under a microscope we would find that composed of several filaments, because fibre of flax can be separated almost indefinitely into filaments. So that to be strictly correct it is my understanding that a filament is the finest subdivision that can be made.

42 Q. It is a unit?

A. A unit.

* * * * * * *

Q. Now, are yarns capable of certain practical uses?

A. Certainly.

Q. What are they?

A. Yarns are used for weaving, knitting, and braiding.

Q. Would you regard an article which is not fitted or adapted or commercially adapted for any of the objects which you have just named a yarn?

A. Yes; if it were properly constructed; if it were made of textile fibres—a mass of attenuated 'extile fibres having considerable twist—I would say it was a yarn; though practically it might not be of any use.

Q. Would it be commercially a yarn?

A. No.

* * * * * * *

NEW YORK, *March 23, 1906—10 a. m.*

Parties met pursuant to adjournment.

Before Board No. 2.

Present: Fischer, Howell, and DeVries, general appraisers.

Appearances as before.

Examination of OTIS L. HUMPHREY continued:

By General Appraiser DE VRIES:

Q. How do you distinguish between a thread and a yarn?

A. My understanding of a thread is a ply yarn used in sewing, strictly speaking, a ply yarn used in sewing.

Q. And the other for spinning?

43 A. For spinning, or weaving, or braiding.

* * * * * * *

By Mr. LEVETT:

Q. You have stated that you have heard that horsehair referred to as yarns; am I correct in that?

A. I have heard it referred to—what is known as artificial horsehair referred to as yarns?

Q. Now, is that a general term used in speaking of artificial horsehair?

A. I am not sufficiently familiar with artificial horsehair to know. I should be surprised to learn that it was called yarn.

Q. You are sufficiently familiar with artificial silk, are you, to know how the trade terms it?

A. I have never heard artificial silk called anything but a single artificial yarn (referring to Ex. 1, protest 147631).

Q. Have you ever dealt in artificial silk yarn?

A. No, sir.

Q. And you have not dealt in artificial horsehair?

A. No, sir.

* * * * * * *

ALBERT ECKSTEIN, a witness called on behalf of the importer, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. Mr. Eckstein, what is your business?

A. Importer.

Q. Where is your place of business?

A. 21 West Houston street, New York.

Q. Look at official Exhibit 1, protest No. 147631, and official Exhibit 1, without any protest number attached; do you handle articles of that character?

A. Yes.

Q. Have you bought them?

44 A. Yes.

Q. Look at Exhibits 1 and 2 of protest 138312; do you handle those articles?

A. Yes.

Q. What are they, referring to both groups?

A. One is artificial silk; the second is artificial horsehair.

Q. Do you import artificial silk and artificial horsehai*d* made by the Chardonnet process?

A. Yes, sir.

Q. Have you ever seen that process?

A. Yes.

Q. A number of times?

A. Many times.

* * * * * * *

Q. You have seen also the manufacture of artificial horsehair; have you?

A. Yes.

Q. Describe that process?

A. The artificial horsehair is generally made of four filaments as contained in Exhibit 1. The difference between artificial silk and artificial horsehair is this: While in making the artificial silk the single filaments are given a chance to solidify before they are grouped together; in making the artificial horsehair they are wound while they are still in a gelatinous condition.

Q. But as the stream comes from the aperture they are single streams?

A. Single streams; come from the same nozzle.

* * * * * * *

By Mr. LEVETT:

Q. You say you have been abroad and seen the artificial horsehair made by this Chardonnet process; how often do you visit those factories?

A. Very often.

Q. Four times?

A. More than that.

Q. Ten times?

45 A. Yes, sir; more than that.

Q. And how did you go there? In what capacity?

A. Well, in no particular capacity; but I have a right to go over that factory whenever I please.

Q. Have you any connection with that factory?

A. Yes; we sometimes make certain experiments there—the president of that concern and myself.

Q. And have you been all over that factory?

A. Yes, sir.

Q. Isn't a fact that some parts of the Chardonnet process are kept secret?

A. They may keep some parts secret, but the Kelsterbach factory keeps nothing from me.

* * * * * * *

OTTO FIX, a witness called on behalf of the Government, being duly sworn, testified as follows:

By Mr. LEVETT:

Q. What is your business, Mr. Fix?

A. Examiner of yarns at the United States Appraisers' Department.

Q. Do you have any particular class of yarns that you pass?

A. All vegetable fibre yarns.

Q. Do you pass so-called artificial silk and artificial horsehair?

A. I do.

Q. How long have you been passing it?

A. Since the court's decision, about six weeks ago.

Q. Will you look at Exhibit 1, 147631, on the table before you, and as to which it has been testified that it was made by the Chardonnet process? State if you are familiar with the artificial silk yarn made by the Chardonnet process. Have you counted the number of filaments which go to make up the artificial silk made by the Char-
46 donnet process?

A. I have.

Q. Have you often counted samples?

A. I have counted a great many recently.

Q. Do they run uniform?

A. They run as uniform as might be expected of a fine filament of this character.

Q. What is the number of filaments that go to make them up?

A. The number of filaments in the Chardonnet-Bensancon is twenty-two ends.

* * * * * * *

Q. Look at the sample marked "N" for identification, and state what that is, if you know.

A. That is a cotton yarn, a group cotton yarn, or ply cotton yarn, as it is sometimes called, consisting of approximately twelve single cotton yarns.

Q. Is a twelve-ply cotton yarn often imported at this port?

A. Not so much of recent years, but at one time the yarn used for electrical wire covering was largely imported, and in those days we got many yarns of a great number of plyes; I believe even going up to twenty-one and twenty-three ends.

Q. Were those twisted?

A. They have a small degree of twist.

Q. Speaking now of Exhibit N——

A. Yes; the "N."

Q. And how about those which were twenty-one ply; were those twisted?

A. Just a small degree of twist.

By General Appraiser FISCHER:

Q. Do you pass these darning cottons?

A. Yes.

Q. Did you ever see two, three ply, not twisted or spun?

A. They are laid in parallel lines.

47 Q. Do you remember the merchandise, the subject of court decision some time ago, which passed on those?

A. Yes; the question at stake in that case was an entirely different one from this. The question at that time was as to whether the length of the yarn was 30 yards, I believe, or 180, and the court held that it was a finished yarn, and could only be so considered; that the length was to be taken on the finished yarn and not on each of the parallel threads.

Q. In other words, the threads made one yarn?

A. Yes; but that was only on the question of length. They were not spun.

By General Appraiser De Vries:

Q. Were they twisted?
A. No; not the three parallel yarns.
Q. They laid parallel?
A. Yes.

By General Appraiser Fischer:

Q. They were held to be one yarn?
A. Not a single yarn, but to be one yarn complete.

By Mr. Levett:

Q. Mr. Fix, I break from Exhibit N a piece about a foot in length; would you consider that a yarn?
A. I do.
Q. Break that in half; would you consider each of the halves a yarn?
A. Yes.
Q. And if you got down to an inch of that, would you consider that a yarn?
A. I would.
Q. Take Exhibit 1; break an inch of that off; would you consider that a yarn?
A. I would.
48 Q. And if you take one of the filaments of that and break an inch off that, would you consider that a yarn?
A. I would; a single yarn.
Q. Mr. Fix, in the examination of ply cotton yarns do you ever find that the ply runs uneven?
A. I would not want to say that. I don't think I do.

* * * * * * *

By Mr. Washburn:

Q. Is it necessary, in your opinion, that these single yarns have a twist?
A. Are you speaking of any yarn?
Q. Well, you have had some excellent experience for about fourteen years with cotton yarns; confine your testimony to them.
A. In single cotton yarn you have to have a twist.
Q. Never saw a single cotton yarn without a twist?
A. No, sir.
Q. Never saw a cotton yarn that was not made up of a collection of fibres?
A. No; I have not.
Q. A cross section of a cotton yarn would show that?
A. Yes.

* * * * * * *

Q. Did you know prior to six weeks ago of any yarns, in your experience as an expert, which did not have a twist—a certain amount of twist?
A. I knew of artificial silk yarn prior to six weeks ago.

Q. Is that the only variety of yarn which you know of, from your standpoint, which does not have a twist?

A. Speaking of mechanical yarns; yes.

Q. Well, any variety of yarns?

A. Well, I can not confine it to any variety of yarns, because
49 there are yarns which are made by the chemical process which have no twist in them.

Q. Mention yarns of that character.

A. Artificial silk.

Q. Mention others.

A. Drawn glass yarns.

Q. Does a collection of these glass fibres have twist?

A. It is not a collection of them.

Q. You think glass yarns have no twist?

A. Yes; there are glass yarns that have no twist.

Q. Do you pass glass yarns?

A. No, sir; but you asked me as to my knowledge.

Q. Where did you see it?

A. I have seen it frequently drawn.

Q. Have you ever seen it in skeins?

A. No, sir; I have seen it made up and drawn.

* * * * * * *

By General Appraiser HOWELL:

Q. But you can untwist a single cotton yarn; can you?

A. You can, because that is produced from fibres by twisting those fibres together, and in the case of this imitation silk filament the cotton fibre has been dissolved into a gelatinous condition, and naturally when they congeal again the fibres of cotton are no longer there.

Q. So that this filament differs from a single cotton yarn in that respect, that you can not untwist it, while you can the cotton yarn?

A. That is the only difference.

By Mr. WASHBURN:

Q. Has a single cotton yarn tensile strength?

A. So has this. [Exhibit 1.]

Adjourned to Monday, March 26th, 1906, at 10 a. m.

50 NEW YORK, *March 26, 1906—10 a. m.*

Parties met pursuant to adjournment.

Present: Fischer and Howell, general appraisers.

Appearances as before, and John A. Kemp, esq., counsel for the Treasury Department, for the Government.

BERNARD RENTROP, a witness called on behalf of the importers, being duly sworn, testified as follows:

By Mr. BROOKS:

Q. What is your business, sir?

A. I am a silk dyer.

Q. Do you dye anything else but silk?
A. Artificial silk, cotton, mercerized cotton, and mohair yarns.
Q. With what firm are you connected?
A. With William Teschemacher—partner of the firm.
Q. And where is their place of business?
A. 99 Raymond street, Brooklyn.
Q. For how long have you been engaged in the dyeing of yarns?
A. Fourteen years.
Q. Have you had any experience in dyeing what are called artificial silk yarns?
A. I have.
Q. And have you had an extensive experience in dyeing cotton yarns?
A. I have.
Q. Is there any substantial differences in the processes employed in dyeing cotton yarns and artificial silk yarns?
A. They are dyed by the same class of dye stuff.
Q. Please look at Exhibit 1 in this case and state if that represents the artificial silk yarn which you have been accustomed to dyeing?
51 A. It does; yes.
Q. Please take a piece of artificial silk yarn and untwist it so that you can get at the fibres of which it is composed and examine them carefully, and state if you would be able to dye that in the same manner that you would be able to dye artificial silk yarn.
A. We could not dye one of the single filaments.
Q. Please state why you could not dye one of those filaments in the same manner in which you dye artificial silk yarn.
A. They would not be strong enough.
Q. Is there much handling or manipulation required in the process of dyeing artificial silk yarn?
A. Yes.
Q. Please give the board the best information you can as to the result of an attempt on your part to dye a hank of the filaments of which you have one in your hand.
A. If you would attempt to dye a skein——
(Objected to as incompetent. It has not yet been shown that the witness has ever attempted it.
Objection overruled.)
If we would dye a skein composed of these single filaments, after we are through with it I am afraid there would be nothing left but a mass of ends. If we would send it to our customers, they would not be able to wind it. It would be nothing but a mass of small ends. In dyeing this artificial silk we have to guarantee the customer that he is able to wind it, that he can wind it after we have dyed it.

* * * * * * *

By General Appraiser FISCHER:

Q. Do you dye horsehair, too?
A. Yes; artificial silk.

52 Q. What description do you get of that?
A. 150 denier artificial silk, or 300 denier horsehair.
Q. No other word of description, whether it is single or double?
A. No.

* * * * * * *

By Mr. KEMP:

Q. Now, I understand that you dye both, or—you dye cotton, do you?
A. Cotton yarn, mercerized cotton, natural silk, and horsehair yarns.
Q. You dye those three or four different styles?
A. Yes.
Q. Do you go through a different method of dyeing those different yarns or threads that you speak of? Speaking of cotton, just detail what you do in reference to the dyeing of cotton.
A. Cotton is a vegetable fibre, and we have to take a dye which is suitable for a vegetable fibre.
Q. You dye it in what way, in hanks?
A. In hanks.
Q. And you use a certain dye that is suitable for dyeing that particular kind of yarn?
A. Yes.
Q. Is that called a thread and yarn by the cotton trade interchangeably?
A. Yes.
Q. You get both terms?
A. We do.
Q. So you recognize the terms as applicable to both?
A. Yes.
Q. In speaking of silk, what do you do with silk?
A. Artificial silk?
Q. No; the genuine.
A. We call that either tram or floss or organzine or fringe or warp.
53 Q. Those are terms that you give to the genuine silk, are they?
A. Yes.
Q. Are they ever called yarns?
A. Yes; they are silk yarns.
Q. Are they ever called silk threads?
A. They are.
Q. So that those terms are used interchangeably with reference to the silk, are they?
A. Both artificial and natural silk.
Q. And the same terms apply to the artificial as to the natural?
A. There is no artificial silk organzine; there is no artificial silk tram; there is an artificial silk floss.

Q. With those exceptions, you have the same names for the natural silk as for the artificial, do you?

A. Yes.

Q. So that the terms "thread" and "yarn" are used to both artificial silk and natural silk, are they?

A. In our business, yes.

Q. What do you do when dyeing a natural silk?

A. We boil it off first and then dye it.

Q. Do you die it like cotton?

A. No; it has no fibre.

Q. In what respect is it different from cotton?

A. Cotton is vegetable. We use an entirely different class of dye stuff.

Q. You treat it the same way as cotton, do you?

A. We dye both on skeins.

Q. And you dye the artificial silk on skeins, do you not?

A. Yes; we do.

54 OTIS L. HUMPHREY, recalled for cross-examination by the Government.

By Mr. LEVETT:

Q. I understood you to testify, Mr. Humphrey, that sea island cotton was the cotton having the longest staple; am I correct in that?

A. Commercially speaking, sea island is considered the cotton having the longest staple, but I have seen samples of carefully experimental grown Allen seed cotton raised at Port Gibson, Louisiana. I have seen that staple a little longer than any sea island staple I have ever seen, but sea island is commonly recognized as being the longest staple cotton grown.

Q. Can you give us any idea of the thickness of a fibre of sea island cotton?

A. As I remember it, about 1/1500 of an inch.

Q. It sometimes runs as high as 1/1500 of an inch, doesn't it?

A. That is what I testified; that is my best recollection. As I remember it, I should say 1/1500 of an inch.

Q. Take Egyptian cotton; how does the fibre of that run?

A. Not radically different; slightly heavier.

* * * * * * *

By Mr. WASHBURN:

Q. Using the term "spinning," as it is understood by a textile man in the manufacture of yarns with which you are familiar, does it involve a process comparable to the production of those individual filaments, as you have heard the process of producing those filaments described?

A. Not at all the same. The process of spinning as applied to cotton yarns, jute, ramie, flax, wool, any yarns made of textile fibres,
55 consists of spinning those fibres or filaments, attenuating them to the desired size, and putting in sufficient twist to incorporate

them and hold them together, and that, with regard to any substance with which I am familiar, except this and natural silk, is known as spinning.

NEW YORK, *March 26, 1906—2 p. m.*

It is stipulated between counsel for the Government and counsel for Hardt, von Bernuth & Co. that the artificial silk yarn invoiced as 150 denier would be equivalent to 35s cotton count if single; and that 350 denier would be equivalent to a cotton count of 15s if single.

It is stipulated between counsel for the Government and counsel for Dieckerhoff, Raffloer & Co. that the artificial silk which measures 145 denier would be 36—1/2 cotton count if single; and that the artificial horsehair, if of 350 denier, would be No. 15s cotton count if single.

MONTGOMERY WADDELL, a witness called on behalf of the Government, being duly sworn, testified as follows:

By Mr. LEVETT:

Q. What is your business, Mr. Waddell?

A. I am manager of the Genasco Silk Works at Lansdowne, Pa.

Q. What is the business of the Genasco Silk Works?

A. To make artificial silk.

Q. How long have you been connected with that concern?

A. This is my third year.

Q. Were you connected with the industry of making artificial silk prior to your connection with the Genasco Silk Works?

56

A. I was connected with the concern which the Genasco Silk Works succeeded.

Q. And what was that concern?

A. The General Artificial Silk Company.

Q. And what was the business of that concern?

A. Making artificial silk.

Q. Did that concern go out of existence when the present concern with which you are connected was formed?

A. That company failed and the Genasco Silk Works bought its property in.

Q. Did the General Artificial Silk Company produce artificial silk?

A. It did.

Q. Was it able to sell its product in this country?

A. It sold its product.

Q. Was the cause of its failure due in any respect to the product turned out by it?

A. Yes; I think it was mainly due to the product not being up to the market requirements.

Q. What was the trouble with the product turned out by the General Artificial Silk Company which rendered it not up to the standard required by the trade?

A. The silk had too many broken ends.

Q. Was that considered a serious defect in the artificial silk?

A. It is a very serious defect, and it required the silk to be sold at a lower price in order to market it.

Q. If artificial silk to-day has too many broken ends is it a marketable product?

A. Marketable, but at a reduced price.

Q. I hand you sample marked "B" for identification, and ask you if you have seen that sample before?

A. Yes.

Q. And where was that?

57 A. This sample was made by my direction at the Genasco Silk Works.

Q. Just state how that article was produced in a general way.

A. It is made by forcing a solution containing dissolved wood pulp into a coagulating bath, which gave it the present form, excepting that it was much larger owing to the quantity of water and salts contained in it.

Q. When you say it was much larger, when do you mean it was was much larger than it is now?

A. Immediately after it comes; after the solution goes into the coagulating bath.

Q. Was that the product of a single orifice or more than a single orifice?

A. This is of one.

Q. One orifice?

A. Yes.

Mr. LEVETT. I will ask to have this sample marked as "Illustrative Exhibit B" corresponding to the identification.

(Sample received in evidence and so marked.)

Q. I will ask you to look at the sample marked "C" for identification and state if you know anything of the origin of that sample.

A. Yes; I do.

Q. Please state it.

A. This is a single thread made in the same way as I have described Exhibit B.

By Mr. WASHBURN:

Q. Did you make it?

A. It was made under my directions.

By Mr. LEVETT:

Q. In your mill?

A. In my mill.

58 Q. Did that come from the same orifice as Exhibit B or was it larger?

A. It was larger.

Q. Only from one orifice?

A. From one.

Mr. LEVETT. I will ask to have this marked "Illustrative Exhibit C."

(Sample received in evidence and so marked.)

Q. Now look at the sample marked "J" for identification, and state, if you can tell us, the origin of that sample.

A. I can.

Q. Do so.

A. This is about a No. 36s cotton yarn coated with an—I took a No. 36s cotton yarn and coated it with some cellulose material that I used to produce Exhibits B and C.

Mr. LEVETT. I ask to have that marked "Illustrative Exhibit J."

(Sample received in evidence and so marked.)

Q. Look at the sample marked "K" for identification and state whether you know the origin of that article.

A. Yes.

Q. And what was it?

A. This is also made in a similiar way to Exhibits marked "B" and "J."

By Mr. WASHBURN:

Q. Made by you?

A. Made by us.

Mr. LEVETT. I ask to have that marked "Illustrative Exhibit K."

(Sample received in evidence and so marked.)

59 By Mr. LEVETT:

Q. Now, Mr. Waddell, with the exception of Illustrative Exhibit J, did you make the samples just referred to at my request?

A. This sample [indicating C] was not made at your request.

Q. How did you come to make that?

A. This is some of our regular product.

Q. That you sell?

A. Yes.

Q. As to the other two exhibits, B and K, were these made at my request?

A. Exhibit B was not made at your request.

Q. Is that a product that you sell?

A. No; this was an experimental product.

Q. Now, the other article, Exhibit K?

A. Exhibit K; this was made at your request.

* * * * * * *

By Mr. WASHBURN:

Q. The present mills do business under the name of the Genasco Silk Works; is that right?

A. Yes.

Q. And that is the mill that failed?

A. No.

Q. It is the successor of the mill that failed?

A. Yes.

Q. And how long has the present mill been operated—the Genasco Silk Works?

A. It commenced about in the early part of last year—January last year.

Q. 1905?

A. Yes.

Q. It has been working ever since?

A. It started in to overcome the defects that existed in the old method.

Q. Has it been working uninterruptedly ever since?

A. Yes; it has.

60 Q. It has been working uninterruptedly since January, 1905, engaged in the manufacture of artificial silk yarns, has it?

A. It started in only the manufacture—developing, because the process had to be changed.

Q. How long have you been manufacturing in the Genasco Silk Works artificial silk yarn in commercial quantities?

A. We have manufactured very small amounts.

Q. Up to the present time?

A. Yes, of that silk—so-called silk.

Q. I am talking now about artificial silk yarns.

A. Yes.

Q. You have manufactured, you say, very small quantities for the market; that is right, is it?

A. That is right.

Q. You are still in the experimental stage, aren't you?

A. No; we are not.

Q. You have begun now to make it on a commercial scale, have you?

A. We are now beginning. We have——

Q. When did you begin to make artificial silk yarn in commercial quantities?

A. We are just commencing now.

Q. So that you have not so far actually done it, have you?

A. No; we have not.

Q. Now, one artificial silk yarn which you formerly produced is one that was about four times the size of the artificial silk yarn that is on the market, was it?

A. About three times the size.

Q. By the way, do you make artificial horsehair?

A. Yes, sir; and that is what we have been making in quite large quantities during the last half year.

Q. Do you make that in commercial quantities?

A. We do.

Q. How long have you been doing that?

A. We commenced, say, about November.

61 Q. About November?

A. Yes.

Q. 1905; to make artificial horsehair in commercial quantities?

A. Yes.

Q. How much have you put on the market?

A. We have sold about a thousand pounds of it.

Q. And that is the extent of your sales of artificial horsehair, is it?

A. Yes; approximately.
Q. Where did you sell that thousand pounds?
A. We sold it in New York and in Philadelphia.
Q. How much did you sell in New York?
A. Well, I can not tell you those figures; I have not got them with me.

* * * * * * *

By Mr. LEVETT:

Q. Do you make any horsehair which is made from more than a single orifice?
A. No.
Mr. WASHBURN. Objected to. Horsehair made in the manner in which this witness makes horsehair is immaterial.
(Question allowed for the purpose of explaining the various methods in which it is produced.)

* * * * * * *

By Mr. WASHBURN:

Q. Do you sell any artificial horsehair in single filaments or strands or threads, or whatever you please to call them, that are as brittle as that sample you hold in your hand? [Exhibit K.]
A. I can't answer that question.
Q. Can't answer that question?
A. No.

62 WILLIAM CHALMERS, a witness called on behalf of the Government, having been duly sworn, testified as follows:

By Mr. LEVETT:

Q. Mr. Chalmers, what is your business?
A. Cotton yarns.
Q. And how long have you been in the cotton yarn business?
A. Over thirty years.
Q. During those thirty years have you bought or sold cotton yarns in the markets of this country?
A. I have.
Q. Have you bought and sold—how extensively have you sold?
A. In large amounts.
Q. And territorially how extensively?
A. From Maine to California.
Q. Have you been in any other business in all these thirty years, except the cotton yarn business?
A. No.
Q. Are you in business for yourself?
A. No.
Q. In what house are you?
A. Alexander King & Co.
Q. How long have you been with that house?
A. I have been with the house for forty years.

Q. Where is Alexander King & Co. located?

A. 260 West Broadway.

Q. In your trade prior to July 24, 1897, what was the meaning of the term "yarn" as applied to such articles as you have dealt in?

A. Why, cotton yarn after it has been taken from the raw cotton and spun into a yarn.

Q. Were the terms "single," "group," and "ply" used in referring to such yarns?

A. They were.

Q. What was understood as a single yarn?

63 A. A single yarn has to come from—as it was spun.

Q. And what was understood as a ply yarn?

A. When two or more of those singles had been twisted together.

Q. What was understood as a group yarn?

A. When two or more of those singles were laid parallel without any twist in grouping.

Q. If you had three or four singles laid parallel, would you consider that a group yarn?

A. Certainly.

* * * * * * *

Q. Was the term "fibre" used in connection with cotton yarns?

A. Yes.

Q. What was understood by that term in the cotton yarn business?

A. Why, the texture of the cotton of which it was composed.

Q. Was the term "staple" used in connection with cotton yarns?

A. Yes.

Q. What was meant by that term?

A. The terms "fibre" and "staple" were synonymous.

Q. Was the term "filament" used in connection with cotton yarn in your trade?

A. Never heard of it.

Q. In all of your experience of forty years connected with the cotton yarn business—was it forty or thirty?

A. Thirty.

Q. Thirty years. Did you ever remember hearing the term "filament" used in connection with cotton yarn?

A. Never.

Q. Did you ever hear the term "strand" used in connection with cotton yarns?

A. Yes.

* * * * * * *

64 Q. My question was a little awkwardly put. Did you ever hear the fibres or staples which go to make up a single cotton yarn referred to as strands?

A. No.

Q. When you answered my previous question by saying you may have, to what did you understand me as referring when I spoke of strands?

A. I thought you meant as to the single yarn, not to its component parts.

* * * * * * *

By Mr. WASHBURN:

Q. Did you ever see or hear of a single yarn that did not have a twist, and that could not be dissolved into fibres or filaments by untwisting?

A. No; I don't know that I have.

Q. Now, will you look at that Exhibit 1, and examine closely the single filaments which you have called a yarn which compose it, and say whether they have any twist or not; whether those single units have any twist? [Examining sample.]

Mr. LEVETT. It is admitted by the Government that the units of Exhibit 1 have no twist.

H. P. VON NOSTITZ, a witness called on behalf of the importer, being duly sworn, testified as follows:

By Mr. BROOKS:

Q. What is your business, sir?

A. Braid manufacturer.

Q. What concern are you connected with?

A. Novelty Braid Mills.

Q. Where is your place of business?

A. The factory is in Brooklyn; the office, 106 Grand street, New York City.

Q. What kind of goods are made in that factory?

65 A. Why, trimming braids, generally.

Q. Of what are those braids made?

A. Of yarns; different yarns.

Q. What kinds of yarns?

A. Well, silk, artificial silk and natural silk, cotton, mercerized cotton, tinsel, mohair.

Q. Do you have occasion to have yarns dyed?

A. Yes, sir.

* * * * * * *

By Mr. LEVETT:

Q. Do you use single-ply cotton yarns in your braids?

A. Well, not to any great extent.

Q. You generally use the ply cotton yarns, do you?

A. Single ply is mostly—we have used it. We have used it in glazed cotton yarn.

Q. Taking a single-ply cotton yarn, you seldom use it even when glazed?

A. Yes, sir.

Q. When you use cotton yarns, what do use?

A. Generally a ply yarn.

NEW YORK, *March 27th, 1906—10 a. m.*

Parties met pursuant to adjournment.

Present: General Appraisers Fischer and Howell.

Appearances as before, except Mr. Kemp, who was absent.

JOHN ZIMMERMANN, a witness called on behalf of the Government, being duly sworn, testified as follows:

By Mr. LEVETT:

Q. What is your business, Mr. Zimmermann?

66 A. Manufacturer of upholstery goods.

Q. Are you in business for yourself?

A. I am in business in a company. It is a company the concern I am with.

Q. What is the name of your concern?

A. Philadelphia Tapestry Mills.

Q. Located where?

A. Philadelphia.

Q. What street, please?

A. Second and Allegheny avenue.

Q. What is your position in that company?

A. General manager.

Q. And what are your duties as general manager, generally speaking?

A. Looking pretty much after everything in the manufacturing end.

Q. Does that concern deal largely in yarns?

A. We are using a great quantity of yarns.

Q. About how large a quantity of yarns a year does that concern handle?

A. Probably a million and a half pounds.

Q. Just state what different yarns you handle.

A. Why, we use single yarns; we use twisted yarns, linens, cottons, and silks.

Q. How long have you personally been handling yarns in this country?

A. Why, since 1880, about.

Q. Now, have you had any experience as a textile expert or any training?

A. I have had training in some of the best textile schools in Germany.

Q. Please state them, without going too much into details; state one or two schools which you attended.

A. I attended the weaving school in Hardenheim.

Q. Any others?

A. No.

Q. Did you learn the trade as weaver, practical weaver?

67 A. Yes.

Q. Now, you have spoken of single and ply yarn. Will you please state what is understood in the trade, was understood prior to 1897, as a ply yarn, as, I should say, a single yarn?

A. State the question over again.

Q. Please state what was understood in the trade prior to 1897 as a single yarn.

A. A fibre which was spun as a single strand.

Q. What was understood by a ply yarn?

A. A ply yarn was either two, three, or four ply yarn, whatever the case might be, of that single, or any single for that matter.

Q. You have said a ply yarn was two, three, or four ply. What do you mean by that?

A. It would have to be designated. If you say you have 16s, it would have to be designated whether it would be single or ply yarn.

Q. How do you make a ply yarn?

A. Why, by grouping it or twisting several plies together, or grouping them together.

Q. Do you use the term "group yarn" in your trade?

A. Sometimes we do; mostly we use the term "ply," or two-reel yarn, three-reel yarn, in contradistinction to hard-twisted yarn.

Q. Is the term "fibre" used in connection with cotton yarns?

A. I have not heard it used very much; not in the yarn trade.

Q. Is the term "staple" used?

A. It may be used in spinning, which I am not acquainted with. When we get it as yarns we don't bother with these terms much.

Q. Have you ever heard the term "filament" used in connection with cotton yarn?

A. No; I don't know that I have; not as yarns anyway.

* * * * * * *

68 Q. Now, you said you are familiar with the process of manufacturing artificial silk yarns as produced by the Genasco Silk Mills. Will you state if there is any part of that machine which is known as the spinner?

A. Why, yes.

Mr. WASHBURN. Objected to. We are not concerned with the process of manufacture of the Genasco Silk Mills or Works. Any testimony as to the names of the machines or parts of the machines used in the Genasco Silk Works is immaterial.

(Objection overruled.)

Q. Will you please describe what that part is?

(Objected to as immaterial. Objection overruled.)

A. The machine is used to force the liquid out of which the silk is thrown through an aperture. The size of the silk is determined, and after that the thread is doubled and twisted.

Q. Now, what is that process called by which these threads are formed from the apertures?

A. We call it spinning.

Q. What do you call the aperture?

A. Why, it is simply a little hole through which the liquid is pressed and the thread formed, thrown away by a spool and wound up.

Q. Has that aperture any particular name?

A. Why, I don't know. It is a hole.

* * * * * * *

By Mr. WASHBURN:

Q. What is the spinning machine?

A. It is the machine to throw the liquid into the fibres as you see it here.

By General Appraiser FISCHER:

Q. How big is it? What does it look like?

69 A. It is a series of spindles, "spinnrads" we call them, grouped together in a long frame, and each one of these spindles or spinnrads has a cylinder behind it which has the liquid from which this is thrown under pressure, and the liquid is forced through an aperture and immediately subjected to a hardening process by acids, so as to dry each individual strand sufficiently before it is united with the others. After it is sufficiently treated it is united with the other fibres.

HARRY MANLEY, a witness called on behalf of the Government, being duly sworn, testified as follows:

By Mr. LEVETT:

Q. Will you state your business, Mr. Manley?

A. Importer of cotton yarns.

Q. Located where?

A. Wool Exchange Building.

Q. And what is the name of your concern?

A. Bale & Manley.

Q. Are you one of the firm?

A. Yes.

Q. How long have you been in the cotton yarn business?

A. About eighteen years.

Q. Do you handle other yarns besides cotton yarns?

A. Very seldom.

Q. Exclusively cotton?

A. Yes.

Q. Do you sell cotton yarns throughout the country personally?

A. Yes, sir.

Q. And have you done so for the last eighteen years?

A. Yes, sir.

70 Q. Now, in your trade prior to July 24th, 1897, were the terms "single" and "ply" used in connection with cotton yarns?

A. Single and ply; yes.

Q. And what was understood as a single yarn?

A. Well, when it came direct from the spinner.
Q. And a ply yarn?
A. Two or more ends doubled.
Q. Did you use the term "fibre" or "staple" in your business prior to 1897?
A. Well, we used the term "staple" occasionally. We are not asked much about that.
Q. What do you understand by the term "staple?"
A. Well, the length of the cotton.
Q. Is the staple raw material?
A. Yes.
Q. Always?
A. After it has been spun we call it the staple.
Q. Taking it as staple, as far as the yarn trade is concerned, is it raw material?
A. Yes.
Q. Did you ever hear the term "filament" used in connection with cotton yarn?
A. Never.
Q. In all your experience did you ever hear that term?
A. Never.
Q. Did you ever hear the term "strand" used in connection with cotton yarns?
A. Occasionally.
Q. To what did that refer generally?
A. Well, when we put one or two ends together you would sometimes call it a strand instead of an end.
Q. Would you call an end a strand?
A. Yes.
Q. Taking single cotton yarns of No. 35, what is the least number of turns to the inch of the longest staple that you know of?
71 A. I should think ten or twelve. We seldom go into the twist of a single yarn. We seldom are asked the twist of a single yarn.
Q. Have you ever known of a single yarn whose turns to the inch would be less than ten?
A. We sell lots—you are speaking of the single yarns?
Q. Yes.
A. No.
Q. Would it be possible for a single yarn to have less turns than that of No. 35?
A. It may. We hardly go into the twist on a single yarn at all.
Q. From your experience as a yarn man, would you say that a single yarn, No. 35, which had only four turns to the inch, would be possible?
A. It would require pretty delicate handling.

* * * * * * *

Q. Do you use the term "group yarns?"
A. Yes.

Q. And what do you understand by that?
A. Well, so many ends laid parallel.
Q. And what is their purpose—chief purpose?
A. Well, for covering.

* * * * * * *

By Mr. WASHBURN:

Q. Do you know of any single yarn in all your experience as a yarn man, either single or ply, that has not got a certain amount of twist?
A. It has always got a twist in it; certainly.
Q. That is one of the characteristics of a yarn, is it not?
A. It has got to be twisted.
Q. That is one of the characteristics of a yarn, that it has got to be twisted?
A. Certainly.
Q. You don't know of any single yarn, do you, that is not capable of being untwisted and resolved into fibres or filaments?
72 A. No.

* * * * * * *

By Mr. LEVETT:

Q. If science has devised a process by which a yarn can be spun without twisting together cotton fibres, would you consider that as a yarn, even if the fibres were not twisted?
A. Certainly; yes.
Mr. WASHBURN. I move that the question be stricken out. It is calling for a conclusion.
(Motion denied.)
Q. Would you state that one of the single strands is similar to a cotton yarn of that number?
A. Yes.
Q. In its characteristics generally?
A. Yes.

By Mr. WASHBURN:

Q. If science should devise a yarn without a twisting process, you would concede, I suppose, Mr. Manley, that it would have to be an article capable of some practical use, would you not?
A. Yes.

OTTO FIX, recalled:

By Mr. LEVETT:

Q. Now, Mr. Fix, in regard to artificial horsehair, are you able to determine whether such artificial horsehair is made of a single strand from one orifice or from two or more strands fastened together?
A. I am.
Q. How do you determine that?
73 A. By taking a cross section clearly defined lines will show whether or no it is one strand or composed of a number of strands.

Q. Have you examined samples of horsehair entered at this port, and passed by you for the purpose of ascertaining whether it is composed of one or more strands?

A. I have examined it.

Q. What was the result of your examinations?

A. I found that one make of horsehair is composed of at least three strands, while another is made of one strand.

Q. Do you know by which process those two are made, respectively?

A. Well, to the best of my belief, one is the Elberfeld, that is, the singles; and the Frankfort is the three, but I would not want to say that positively without referring to my notes.

Mr. WASHBURN. I wish you would examine your notes.

The WITNESS. All right.

Mr. LEVETT. I will suspend the examination of Mr. Fix, then, until he gets his notes.

At this point a recess was taken until 1.15 p. m.

NEW YORK, *March 27, 1906—1.15 p. m.*

JOHN H. LORRIMER, called on behalf of the Government, being duly sworn, testified as follows:

By Mr. LEVETT:

Q. Mr. Lorrimer, will you state your business, please?

74 A. As it pertains to cotton yarns, I am president of William H. Lawrence Sons Co., which dyes and converts yarns in a commercial way. I am also president of the Lorrimer Machinery Company, which builds machinery for the special treatment of yarns in a large way. I am also president of the American Mercerizing Co., which treats yarns somewhat largely. That is as far as my business is connected with the cotton-yarn trade.

Q. And how long back does your experience with cotton yarns run?

A. About forty-five years, practically.

Q. Where is your place of business, Mr. Lorrimer?

A. Philadelphia.

Q. Will you give the address, please.

A. Ontario and Lawrence streets, Philadelphia.

Q. Now, in your experience of forty-five years, have you handled other yarns besides cotton yarns?

A. Oh, yes.

Q. Will you enumerate some of the kinds you have handled?

A. Commercially all the kinds of yarns that are known to commerce and textiles. I have had some experience in the handling of all of them during that forty-five years; only the practical handling of them, remember, not laboratorially.

Q. And in that handling have you personally sold yarns throughout the country?

A. Yes; and bought.

Q. Now, prior to July 24, 1897, what was the meaning of the term "yarn" as applied to such articles as you have dealt in?

A. Any combination of fibres grouped together so as to be parallel, combed, and carded, and spun or twisted into yarns.

Q. Does your definition apply to single yarns as well as ply yarns?

75 A. Yarns have to be made in the single before they can be plied.

Q. State what the trade understood to be a ply yarn.

A. Any combination of two or more single strands of yarns; threads of yarn.

Q. Do you know the term "group yarn?"

A. We don't use it very much, but we understand what it means.

Q. And what is that understanding?

A. It means the grouping of several single threads.

Q. Are they twisted?

A. With a minimum twist, or just sufficient twist to keep them from falling apart.

Q. In the course of your forty-five years experience in dealing in cotton yarns have you heard the term "fibre" used in connection therewith?

A. Most yarns are made from fibres; but we users of the yarns themselves have very little to do with fibre as fibres.

Q. Have you heard the term "staple" used in connection with cotton yarns?

A. Yes; very often.

Q. And what does that apply to?

A. The length of the fibre.

Q. Are "fibre" and "staple" synonymous terms?

A. Not exactly, but in a general way they are.

Q. So far as they refer to an article are the terms "staple" and "fibre" synonymous?

A. Commercially I think they might be called synonymous.

Q. Now, in your experience with cotton yarns have you ever heard the term "filament" used?

A. In cotton yarns, no.

Q. Have you heard the term "filament" used in connection with any yarns?

A. Yes; silk yarns.

Q. Have you heard the term "strand" used in connection with cotton yarns?

76 A. Oh, yes, in a general way; but it is to describe some specific purpose for which it might be used.

Q. And so far as you have heard it used what was understood by that term?

A. Laying one strand of yarn down, and another strand down, and so on.

Q. Does "strand" apply to singles or plies or to both?

A. Both, as the case may be.

Q. Now, consider a single cotton yarn of No. 35, what would be the least number of turns to the inch of the longest staple known?

A. I am not sufficiently acquainted with the spinning of yarn to state that from my own knowledge.

Q. From your knowledge and experience with single cotton yarns are you able to state whether you have ever known a single cotton yarn whose twist was less than ten to the inch, of No. 35?

A. I am not.

Q. Are you able to state positively whether you have ever seen a single 35s cotton yarn whose twists were four to the inch?

A. I have not; that is, I may have seen it, but from own knowledge cannot state it to-day.

* * * * * * *

By Mr. WASHBURN:

Q. Now, I understand you to say, Mr. Lorrimer, that a single yarn is any combination of fibres grouped together parallel, combed and drawn and twisted into a single yarn; that is your definition, is it?

A. That is my definition of that. It may not be the dictionary definition of it; it is mine.

Q. I will accept that, Mr. Lorrimer. You don't know of any single yarn, do you, that cannot be untwisted and resolved into the fibres of which it is made up, do you?

A. I think I do.

77 Q. Well, I wish you would enumerate some of them?

A. This that is here is one.

Q. Enumerate some of them.

A. A silk thread is another; a spider's web is another; a glass-spun thread is another.

Q. Let us talk about the fibres that you regard as yarns.

A. I regard all of these as yarns, my dear sir. They are all threads of yarn according to my understanding of a textile fibre of spun yarn.

Q. Do you handle, for example, glass-spun yarn?

A. I have handled it.

Q. Dealt in them in a commercial way?

A. No; I have not dealt in them commercially.

Q. You mean you have merely seen them?

A. I have seen them and had them pretty thoroughly investigated.

Q. Have you dealt in spiders' webs?

A. Yes; I have dealt in spiders' webs.

Q. Bought and sold them?

A. I have bought and sold them.

Q. In commercial quantities?

A. Not what might be—if a buying and selling is a commercial transaction.

Q. Do you deal in them in wholesale quantities?

A. No.

Q. Do you deal in them as yarns?

A. No.

Q. How about silk yarns?
A. I deal in them sometimes.
Q. In ordinary wholesale quantities?
A. Yes.
Q. Buy and sell them for the trade?
A. Yes; sometimes.
Q. Do you know of any other yarns, single yarns, which can not be resolved by untwisting into their original fibres or filaments?
78 A. A yarn that is spun from a short fibre can be untwisted. A yarn that is spun as the spiders' web is spun, or as this new thread is spun, can not be untwisted.

* * * * * * *

By Mr. LEVETT:

Q. I forgot to ask you to look at these horsehair samples. I wish you would look at Exhibits 1 and 2, protest 138312, and state whether you consider those articles to be yarns.
A. It is a yarn.
Q. Would you say they were single yarns?
A. It looks so because they are all glued together. If there are multiples there they are so fastened and so grouped together that they become a single yarn; or it may be it is a thicker exudation or a thicker thread.
Q. That refers to both of those exhibits, does it?
A. I suppose the black is the same; looks the same and feels the same.
Q. Now, in cotton yarns, are the staples of cotton considered as raw material by the yarn people?
A. Staple of cotton?
Q. Yes.
A. The cotton in the raw, you mean?
Q. Yes.
A. It is raw material.

HENRY BERNSTEIN, a witness called on behalf of the Government, being duly sworn, testified as follows:

By Mr. LEVETT:

Q. Where do you reside, Mr. Bernstein?
A. Philadelphia.
Q. And what is your business?
79 A. I am a manufacturer of braids and also make some artificial silk.
Q. Do you make artificial horsehair also?
A. Well, only in a small way.
Q. How long have you been in the braid business?
A. I have been in the braid business twenty-nine years.
Q. Have you had any experience in buying and selling cotton yarns?
A. I have always bought some. I have never sold them direct.

Q. Have you had any training as an expert in weaving or textile industries?

A. Well, I am a graduate of the Vienna Passementerie School of Vienna.

Q. Now, have you been buying cotton yarns?

A. Yes, sir.

Q. In the markets of this country?

A. Yes, sir.

Q. For how long.

A. Oh, for about nineteen years.

Q. Have you heard in the trade the terms "single" and "ply" as applied to yarns?

A. Yes, sir.

Q. Please give us the understanding of the trade so far as you know it prior to 1897 as to the term "single" as applied to cotton yarn.

A. A single cotton yarn is composed of a lot of small fibres twisted—held together by a twist—and made in a continuous length.

Q. And what was understood by ply yarn?

A. Taking two or three or more threads and twisting them up or grouping them together.

Q. Have you had any experience in handling silk yarns?

A. Yes, sir.

Q. What was that experience?

A. Well, I am using thousands of pounds of silk every season.

Q. How long have you been handling silks?

80 A. Since boyhood.

Q. Have you heard the term "fibre" used in connection with cotton yarns?

A. Yes, sir.

Q. What does it mean?

A. It means the staple that helps to make up the cotton threads.

Q. Did you ever hear the term filament used in connection with cotton yarns?

A. Yes, sir. Not with cotton yarns.

Q. Have you heard the term "filament" used in connection with any yarns at all?

A. Yes, sir.

Q. What kind of yarns were those?

A. Silk yarns.

Q. And what was understood by the term "filament" in that respect?

A. A minute thread.

Q. Do you know of any single cotton yarns of No. 35 whose twist is only four to the inch

A. No, sir.

Q. Do you know of any cotton yarns at all No. 35, whose twist is only four to the inch?

A. Single; no.

Q. Do you know of any at all, single or ply?

A. Ply, yes.

Q. Have you often had occasion to deal in ply yarns whose twist was only four to the inch?

A. We often make that in using trimmings; twist them together with just one half turn to the inch.

Q. How high in numbers have you handled single cotton yarns?

A. About 100s, fine polished cotton yarns used in connection with making artificial silk braids.

* * * * * * *

Q. What is the machine which produces your yarn called?

A. It is called the spinning machine.

Q. And what is its purpose?

81 A. To spin the filaments—the threads.

By General Appraiser FISCHER:

Q. Say what you mean by "spinning the filaments."

(Not answered.)

By Mr. LEVETT:

Q. What do you mean by "spinning the filaments?"

A. After we have a solution of certain consistency we press it through small orifices.

Q. What are they called?

A. Spinnerets. And they emerge into a solidifying bath; and when it comes out it is five or six times the size of this finished thread, and they are all wound out parallel, and with a guide which moves front and back, and we sprinkle water on so that we don't get any bad stuff, and continue it while we spin the thread.

By General Appraiser FISCHER:

Q. That machine which forces that through these small orifices is the spinner, is it?

A. Yes, sir.

Q. And what you call spinning is forcing that through these openings?

A. Yes, sir.

By Mr. LEVETT:

Q. Is there any other machine which forms the twist?

A. Yes, sir.

Q. What do you call the machine which twists the individual strands——

Mr. WASHBURN. How is that material?

(Question allowed.)

(Continuing) into the article like Exhibit 1?

A. Spinning machine.

82 OTIS L. HUMPHREY, recalled:

By Mr. LEVETT:

Q. You are assuming in all of your answers that the artificial horsehair is not a yarn?

A. I insist from first to last that it is not a yarn, because it has none of the characteristics of yarn.

Q. Whenever you make a statement in regard to yarn you are excluding artificial horsehair?

A. I am excluding artificial horsehair as a yarn.

NEW YORK, *March 29, 1906—10 a. m.*

Parties met pursuant to adjournment.

Present, General Appraisers Fischer and Howell.

Appearances as before.

OTTO FIX, recalled.

By Mr. LEVETT:

Q. Mr. Fix, you were asked at the last hearing to make an examination for the purpose of ascertaining whether or not you had passed horsehair which was made from a single orifice. Did you make such examination?

A. I did.

Q. And what was the result of your examination?

A. I found that an importation recently contained horsehair made of only one filament.

Q. Did you examine that under the microscope?

A. I did.

Q. State how carefully you examined it.

A. I examined it both under a microscope and under a glass of sufficient magnifying power to show whether the horsehair

83 was composed of more than one filament. As far is I can see I cannot find it to be composed of more than one.

Q. Can you state whose goods those were?

A. The goods were shipped by the Elberfeld people.

Q. Can you tell what factory?

A. No; the label shows both.

* * * * * * * *

By Mr. WASHBURN:

Q. Have you been passing horsehair as assimilating to single cotton yarns?

A. I have.

Q. Look at the official exhibits on 138312, 1 and 2, and tell us what number of cotton schedule they would be.

A. It would be dutiable under 20, which would be one rate.

Q. Is that true with most of the artificial horsehair that you pass?

A. Yes.

Q. That is to say, anything under 20 takes one rate?

A. Yes.

The WITNESS. May I be permitted to change my testimony in reference to saying that this exhibit was the only one that I examined under the microscope as containing but one filament? I want to amend that. Your question brought to mind an examination that I made shortly after I commenced examining these goods. In order to determine to my own satisfaction at that time as to whether the goods were composed of one filament, I did make a microscopical examination of one sample. I found that sample to be also composed of one filament.

84 DAVID NUSSBAUM, a witness called on behalf of the importers, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. Mr. Nussbaum, what is your occupation?
A. Knit goods manufacturer.
Q. How long have you been engaged in that business?
A. About eight years; about ten years altogether.
Q. And during that time have you handled in commercial quantities various kinds of yarns?
A. Yes, sir.
Q. Bought and sold them in wholesale quantities, have you?
A. Yes, sir.
Q. And are familiar with them commercially?
A. Yes, sir.
Q. Does that apply to cotton yarns?
A. Yes, sir.
Q. What other varieties?
A. Cotton, worsted, silk——
Q. In fact, you have handled the usual commercial varieties of yarns, have you?
A. Yes, sir.
Q. Will you tell us what a yarn was in the trade on and prior to July 24, 1897?
A. I beg your pardon——

By Mr. LEVETT:

Q. You have stated you have been in the knitting business ten years. Prior to July 24, 1897, what was your particular occupation?
A. In the yarn business.
Q. What were you doing?
A. Manufacturing and selling, and looking after the yarn business.
Q. Were you selling personally?
A. Yes, sir.
85 Q. Throughout the country?
A. Yes, sir.
Q. Can you give us the exact date when you started to sell cotton yarns throughout the United States?
A. Why, I started in the yarn business October 29, 1879.
Q. When did you start to sell cotton yarns?

A. Possibly I started in to sell when I became familiar enough to talk about yarns; maybe two weeks later; maybe four weeks; maybe six weeks.

Q. Then while you were in the knitting business only ten years you were in the yarn business prior to that time?

A. Yes, sir.

Q. And were you selling cotton yarn prior to the time you went into the knitting business?

A. Yes; before I went into the knitting goods business I sold yarns.

Q. Were you in the cotton yarn business prior to the time you went into the knitting business?

A. Yes.

By Mr. WASHBURN:

Q. Will you tell us what a yarn was understood to be in the trade on and prior to July 24, 1897?

A. Why, any fibre that could be worked successfully and practically on a machine.

Q. By the way, as to the construction of yarns with which you have been familiar, do or do they not have a certain amount of twist?

A. Yes; they have a certain amount of twist.

Q. That is, the fibres are interlocked by twisting?

A. By twisting; yes, sir.

86 United States Circuit Court, Southern District of New York.

ALBERT ECKSTEIN
vs.
THE UNITED STATES. } No. 4335.

NEW YORK, *December 16, 1907.*

Present: Albert H. Washburn, esq., for the importer; J. Osgood Nichols, esq., assistant U. S. attorney, for the United States.

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the following-named witnesses having been first duly sworn by John A. Shields, esq., clerk of this court, may be examined and their testimony received with the same force and effect as though the general appraiser, to whom this matter was referred for the taking of further testimony, was present.

ALBERT ECKSTEIN, called as a witness in his own behalf, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. What is your occupation, Mr. Eckstein?

A. Importer of yarns.

Q. How long have you been in that business?

A. Ten years.

Q. Where is your place of business now?

A. 21 West Houston street, New York City.

Q. Were you familiar with yarns prior to 1897?

87 A. Yes.

Q. Mr. Klein appeared in this case when it was heard before this board. Was he at that time your confidential man?

A. Yes.

Q. Been with you for a number of years?

A. Since 1897.

Q. What kind of yarns do you import?

A. Principally artificial silk and artificial horsehair.

Q. Referring to artificial horsehair, by what process is the artificial yarn that you import made?

A. The Chardonnet is one of them; the other is Fremery.

Q. Are you familiar with both processes?

A. Yes.

Q. I believe you spend more or less of time in Europe nowadays?

A. Yes, sir.

Q. And visit the factories from time to time?

A. Yes.

Q. I call your attention to language used in Von Bernuth vs. United States, 146 Fed. Rep., 61: "The cotton waste is dissolved in a solution of cup-ammonium, a salt of copper and ammonia, and this solution is forced through fine apertures, discharging into a bath of acetic acid, forming threads of cellulose."

A. That is the Fremery process.

Q. Does that accurately describe the Fremery process of making artificial horsehair?

A. It does.

Q. Will you tell us what the Chardonnet process is, briefly?

A. The cotton waste or raw cotton is taken and turned into gun cotton at first. This gun cotton is mixed with alcohol and

88 ether, thereby being dissolved into liquid, and this liquid is forced by pressure through pipes, at the end of which there is a number of small apertures. Whenever this solution which is forced through these apertures strikes the air it solidifies and forms——

Q. With special reference to artificial horsehair?

A. Well, it is a little different at the end making artificial horsehair. This solution is pressed into water, so as to keep the little filaments, so as to not let them solidify at once when they strike the air, and keep them moist so they will stick together. They are supposed to stick and combine. They are driven perhaps six inches through this water, and when they strike the air they stick together, form one thread, and solidify.

Q. Form a single thread?

A. Yes.

Q. Anything further?

A. That is all.

Q. At some stage is this material denitrated?

A. Yes; afterwards it is denitrated.

Q. Briefly, what is that process?

A. Well, at first it is rolled on a bobbin, wound on a bobbin; from this bobbin it is reeled into a skein—that is, from this bobbin it is reeled and made into a skein. Now comes this process of denitration. The skeins are simply held in a solution of sulphur ammonia.

Q. Is that an important process in the stage of this manufacture, this denitration?

A. Oh, yes.

Q. Go ahead.

A. Before the process of denitration the material would be highly inflammatory. Denitration is only effected in order to do away with this danger.

Q. In what form does artificial horsehair yarn usually come on the market?

A. In skeins such as this [referring to Exhibits 5 and 6, 146247, Feb. 24, 1906].

89 Q. Also come on spools sometimes?

A. Sometimes imported on spools, but only black, after it is dyed black.

Q. So it comes either in skeins or on spools?

A. The bulk is imported either raw in skeins or black in spools.

Q. Taking artificial horsehair as it is imported, is it a correct statement to say that it is composed of denitrated cellulose?

A. Yes.

Q. Or nonnitrated cellulose?

A. Yes.

Q. One of the two?

A. Yes.

Q. What are yarns as a class used for?

A. Yarns in general?

Q. Yes.

A. Used for weaving, braiding, and knitting purposes, perhaps some other work; crochet work.

Q. In order to be fit for those uses what quality must yarn possess?

A. Well, first of all it must be yarn of a certain continuous length and it must have a certain strength.

Q. Are you familiar with glazed cotton yarns?

A. To a certain extent, yes, but not very much.

Q. Are they sometimes known as polished cotton yarns?

A. Yes.

Q. What are some of their uses?

A. Similar uses as this artificial horsehair.

Q. That use is——

A. They use artificial horsehair mostly for making braids for millinery purposes, ladies' hats.

Q. And what would you say as to glazed cotton yarns?

A. Glazed cotton yarn is also used for the same purposes, but also for a good many more purposes.

Q. Have you brought a sample here of a braid made of a glazed cotton yarn?

90 A. Here is a braid made from cotton yarn [producing a sample].

Q. Glazed cotton yarn?

A. Yes.

Mr. WASHBURN. I offer this sample in evidence. By reason of the very large number of samples heretofore introduced into this record, I will ask that a new series be created, and that this sample be marked "Illustrative Exhibit 100" of this date.

(Said sample received and so marked.)

Q. Have you got a sample of braid made with artificial horsehair yarn?

A. Yes, I have. [Witness produces sample.]

Mr. WASHBURN. I offer that in evidence and ask that it be marked "Illustrative Exhibit 101" of this date.

(Said sample received and so marked.)

Q. Did you import and enter, Mr. Eckstein, artificial horsehair yarns between February and May, 1906?

A. Yes.

Q. Were some of those shipments returned by the customs authorities under paragraph 302 of the present tariff act at six cents a pound?

A. Yes; some were returned at six cents a pound as cotton yarn.

Q. Whether as a matter of fact artificial silk yarn and artificial horsehair yarn are made by the same patents and by the same process practically?

A. Yes, made by the same concerns.

Q. And the same process?

A. Practically the same process.

Q. The difference being what, in a word?

A. The difference is this: In making artificial silk they make very fine filaments and group and twist them together.

91 Q. At what stage do those filaments become grouped and twisted?

A. After they leave the orifices; after they have solidified.

Q. After the individual filaments have solidified?

A. Yes.

Q. And as to horsehair, when does the solidification take place?

A. The single filaments are not allowed to solidify before they are made to stick together, so as to form one yarn, one thread.

Q. I show you a sample and ask you to tell me what it is.

A. Artificial silk.

Q. Which illustrates the difference you have just pointed out?

A. Yes.

Mr. WASHBURN. I offer this sample in evidence as Illustrative Exhibit 102.

(Said sample received and so marked.)

Q. I call your attention to Exhibits 5 and 6, 146247, Feb. 24, 1906. What process are they made by?

A. Fremery.

Q. And the other exhibits?

A. By the Chardonnet process, these black spools [referring to Exhibit 1, 146247, Feb. 21, 1905, and Exhibit 1, Feb. 24, 1906].

Q. I call your attention to Exhibit 2, 146247.

A. That is made under the Chardonnet process.

Q. Exhibit 3, 146247.

A. Made under the Chardonnet process.

Q. Exhibit 4, 146247.

A. Made under the Chardonnet process.

Q. Look at exhibits, protest 138312.

A. They all seem to be Chardonnet products.

92 Cross-examination by Mr. NICHOLS:

Q. Referring to Illustrative Exhibits 100 and 101, what do you describe these articles as?

A. They are braids; the one in your left hand is made from artificial horsehair [referring to Illustrative Exhibit 101], and the other one is made from cotton [referring to Illustrative Exhibit 100].

Q. You didn't describe either of these exhibits as yarns, did you?

A. No; they are braids made from yarns.

Q. Referring to Illustrative Exhibit 100, that is composed of filaments which, in your opinion, represent horsehair?

A. No; it is not; it is a cotton yarn.

Q. Do you regard these filaments out of which the braid is manufactured as resembling horsehair?

A. I would call it a yarn. Filaments are the component parts of a yarn.

Q. Then why do you call these fibres or threads, or whatever it is that compose the mesh of the braid, yarns rather than filaments? Are they not composed of a number of fibres?

A. Yes; these are the filaments. [Illustrating with one of the exhibits.]

By Mr. WASHBURN:

Q. That is, the yarn can be resolved into filaments in the case of the glazed cotton yarn?

A. It could, if you get the glaze off.

By Mr. NICHOLS:

Q. I don't want to bring out any incorrect impression by reason of the form of my question; but what I am trying to find out is whether these yarns, as you call them, out of which this exhibit (Illus. Ex. 100) is made, are not composed of a number of cotton filaments twisted together and then covered by some kind of glazing?

93 A. Yes.

Q. And dyed black?

A. Exactly; dyed black first and then glazed.

Q. Illustrative Exhibit 101, on the other hand, is composed of single solid filaments of horsehair?

A. Well, it appears to be single now, because they stick so tightly together, even if it is made from more than one filament.

Q. But as far as you can observe it is made from single filaments?

A. Yes.

Q. Horsehairs are never twisted together to form threads?

A. It needn't be twisted.

Q. So that a horsehair braid is composed of a number of single horsehairs braided together?

A. Yes.

By Mr. WASHBURN:

Q. Do you say that the European producers of artificial silk and artificial horsehair use cotton as a raw material?

A. Yes.

By Mr. NICHOLS:

Q. In all these processes that you have described the cotton is dissolved?

A. Yes.

Q. Absolutely?

A. Absolutely.

By Mr. WASHBURN:

Q. What process do they employ at Kelstenbach?

A. The Chardonnet process.

Q. And what process at Elberfeld?

A. Fremery.

Q. Referring to the way and manner in which artificial horsehair yarns are dyed, Mr. Eckstein, how does it correspond to the dyeing of cotton yarns?

94 A. It is dyed in the same manner. They are dyed by the same people who dye cotton yarns.

Q. That is, they employ cotton dyes?

A. Yes; technically dyed in the same way.

Q. Would it be feasible to dye artificial horsehair or artificial silk yarns in the same way and manner in which natural silk yarns are dyed?

A. No.

Q. Why not?

A. It is an entirely different process.

Q. Are the official exhibits which you have examined here dyed in the manner you have just described?

A. Yes; they are dyed as cotton yarns would be dyed.

LIONEL F. STRAUS, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. With what concern are you connected?

A. F. A. Straus & Co.

Q. Where is your place of business?

A. 93 Greene street.
Q. You are a member of the firm, I believe?
A. Yes.
Q. Your business is what?
A. Manufacturing and importing yarns.
Q. How long have you been in that business?
A. I have been in business twenty years.
Q. What kinds of yarns do you handle?
A. We manufacture worsted yarns and thrown silks; we also deal in cotton yarn, tinsel, artificial silk yarns, and artificial horsehair.
Q. Did you deal in yarns prior to 1897?
A. We did.
95 Q. I direct your attention to the Century Dictionary definition of "yarn:" "Originally, thread of any kind spun from natural fibres, vegetable or animal, or even mineral; now, more usually, thread prepared for weaving, as distinguished from sewing thread of any sort." Does this definition correspond to the trade understanding of yarn prior to 1897?
A. Not entirely.
Q. In what respect would you amend it?
A. Yarn can be used for weaving, knitting, braiding.
Q. So that as a class yarns are used for the purposes that you have just enumerated; is that a fair statement?
A. Yes, sir.
Q. Tested by your definition, are the official exhibits in this case [said official exhibits here shown to witness] yarns?
A. Yes, sir.
Q. In order for yarns to be fitted for the various uses which you have enumerated, what quality or qualities must they possess?
A. Tensile strength, principally.

By Mr. NICHOLS:

Q. Is that true as to all these yarns, or are you referring to cotton?
A. No; all yarns.

By Mr. WASHBURN:

Q. Tensile strength sufficient for what purpose?
A. In order to have strength sufficient to wind them in order to make warps, for the particular purpose they may be used for.
Q. Are you familiar with glazed cotton yarns?
A. Yes.
Q. Are they sometimes known as polished cotton yarns?
96 A. Yes, sir.
Q. Dealt in them, have you?
A. Yes.
Q. And did deal in them prior to 1897?
A. I did.
Q. What are some of their uses?
A. Manufacturing of braids, both millinery and binding braids, and manufacturing of whips, shoe laces, and imitation haircloth.

Q. What are some of the uses to which artificial horsehair yarns are put?

A. Similar uses, with the exception of possibly the whip purpose.

Q. You handle cotton yarns?

A. We do.

Q. And handled them prior to 1897?

A. We did.

Q. Referring to the official exhibits in this case now before you, Exhibits 1 to 6, 146247, Feb. 24, 1906, and Exhibit 1, 146247, Feb. 21, 1905, and Exhibits protest 138312, do they correspond to single or double cotton yarns?

A. Single cotton.

Q. I direct your attention to Exhibits 5 and 6, 146247, Feb. 24, 1906, which have been identified as goods of the Fremery process, Exhibit 5 being 300 denier and Exhibit 6 350 denier, and will ask you to tell us approximately to what number of the cotton schedule they correspond?

A. I should say that the 300 denier would approximate the 17 to 18 single yarn.

Q. And the 350 denier?

A. 16 to 17 single yarn.

Mr. WASHBURN. I would state that these numbers correspond to the testimony of the government examiner.

Q. Referring to the other official exhibits, which have been identified as goods made by the Chardonnet process (Kelstenbach), approximately what number do they correspond to?

97

A. Similar numbers; about 16 to 17 single.

Q. Both mittle and grobe?

A. The grobe would very likely run to a number 15 single.

Q. That is it corresponds more with the 350 denier?

A. Yes.

Q. Whereas the mittle——

A. The mittle would be nearer the 300 denier.

Q. At all events they are less than number 20, are they?

A. By fifteen to twenty per cent.

Q. And you know those facts from actual computation?

A. Yes.

Q. Did you import and enter artificial horsehair yarns between February and May, 1906?

A. We did.

Q. Were any of your shipments returned by the customs officials under paragraph 302 at cotton yarns at six cents a pound?

A. We had them passed at six cents a pound; yes, sir.

Q. Between the dates I have mentioned?

A. Yes.

Q. Have you any knowledge as to whether artificial horsehair and glazed or polished cotton yarns are sometimes used together or one as a substitute for the other?

A. Yes; I know that not only can they be used together, but one is used as a substitute for the other.

Q. In making what sort of articles?

A. In making millinery braids.

Q. Your shipments of artificial horsehair yarn, which were passed or returned at six cents a pound by the customs officials, were in all respects similar to the goods covered by these official exhibits?

98 A. Yes.

Q. And you handle goods made both by the Chardonnet and Fremery processes?

A. I am not sufficiently familiar with the process of manufacture——

Q. You know they are so labeled?

A. I know that they come from different manufacturing concerns, but do not know what process they employ.

Q. But you receive artificial horsehair yarns from Elberfeld and Kelstenbach?

A. Yes.

Cross-examination by Mr. NICHOLS:

Q. Mr. Straus, you were asked as to the definition of a yarn and you qualified the definition given in the Century Dictionary, I believe?

A. I did.

Q. Does your qualification and testimony relative to yarns relate to silk yarns or flax yarns and other yarns?

A. To any yarns.

Q. It hadn't particular reference to cotton yarns?

A. No, sir.

Q. In general is it the more common definition of yarns to apply the term to a number of filaments that have been twisted together to form a sort of thread used in weaving?

A. Weaving is not the only use for yarn; but the filaments if drawn out and twisted and so on, provided they have sufficient tensile strength—the strength is the necessary part of all yarns.

Q. What I mean is that, as I understand the more common use of the term, it is a number of filaments of wool or flax or cotton or other similar fibers, that are twisted together with a sufficient number of twists, to produce something of sufficient tensile strength to be used——

99 A. That is the general meaning of the word "yarn."

Redirect examination by Mr. WASHBURN:

Q. And the object of that twisting is for what purpose?

A. In order to reduce a mass of cotton or wool, as the case may be, into a thread.

Q. And to give it the necessary tensile strength?

A. That is due to the twisting.

Q. Is it necessary to twist in any way this material which you have identified as artificial horsehair yarn in order to get the requisite tensile strength?

A. Not in its finished condition. As far as the manufacture is concerned I don't know anything about the way it is made.

Recross-examination by Mr. NICHOLS:

Q. Have you expert knowledge of the manufacture of cotton yarns?

A. No, sir; I have a general knowledge, but not an expert knowledge.

Q. From your general knowledge would you be able to say whether a certain number of twists of the fibre is necessary to make yarn?

A. No, because yarn for certain purposes would have to have a great deal of twist; for other purposes it has to have very very little; for instance, a weaving yarn takes a great deal of twist.

By Mr. WASHBURN:

Q. Is that to give it more tensile strength?

A. That is to give it more tensile strength.

The WITNESS. A knitting yarn can have very little, almost a floss, almost an open twist, simply that the fibres stick together.

100 By Mr. NICHOLS:

Q. A certain minimum number of twists would be necessary to produce a cotton yarn?

A. Yes.

Q. And without the twists the fibers wouldn't hold together at all?

A. They would hold together, but not to have tensile strength.

By Mr. WASHBURN:

Q. Measured by the amended definition which you gave us a short time ago, would these artificial horsehair yarns be regarded as yarns by the trade and have been so regarded by the trade in July, 1897, and prior thereto?

A. Yes, sir.

By Mr. NICHOLS:

Q. They would be commonly regarded as yarns in the trade, although they might be technically——

A. Being a new article they were called horsehair. No more than a man coming in to buy cotton yarn, he will not say "I want to buy cotton yarn;" he would say "I want to buy cotton." And the man that wants to buy worsted yarn, he will say he wants to buy worsted. The wird "yarn" isn't necessarily used in the trade.

Q. As a matter of fact, it wasn't used in reference to this horsehair?

A. No; nor is it generally.

By Mr. WASHBURN:

Q. In the same sense it is not used in connection with cotton or worsted?

A. Exactly.

Q. Is artificial horsehair yarn like these official exhibits carried generally by the yarn people?

A. By those yarn dealers who sell braid and millinery supply yarns.

101 EMIL ROEHRIG, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. Mr. Roehrig, with what concern are you connected?
A. Barthels Manufacturing Company.
Q. What is your connection with that concern?
A. I am president of the concern.
Q. Where is their business?
A. Glendale, Long Island.
Q. What is their business?
A. Manufacturing shoe laces, braids.
Q. And in the conduct of that business you have occasion to handle different kinds of yarns in wholesale quantities?
A. Yes, sir.
Q. And did prior to 1897?
A. Not in this country.
Q. What kinds of yarns do you carry?
A. Polished cotton or glazed cotton, and silk artificial horsehair.
Q. What else?
A. Mercerized cotton.
Q. In a word, do you carry such yarns as are used in the manufacture of braids and the other articles that you manufacture?
A. Yes.
Q. Referring to artificial horsehair yarn and to glazed or polished cotton yarn, for what purpose are they usually employed, making what?
A. Making braids, shoe laces.
Q. Are they sometimes used interchangeably; that is, one for the other?
A. They are not used interchangeably for the shoe laces, but for braids they are.
Q. Have you got with you a sample of braid made of artificial horsehair yarn?
A. Yes. [Witness produces sample.]

102 (Said sample offered in evidence and marked "Illustrative Exhibit 104, Dec. 16, 1907.")

Q. Can you produce still another sample of a braid made of artificial horsehair yarn?
A. Yes. [Witness produces sample.]
(Said sample offered in evidence and marked "Illustrative Exhibit 105, Dec. 16, 1907.")
Q. Have you got samples of braids made out of glazed cotton yarns?
A. Yes. [Witness produces three samples.]
(Said samples are offered in evidence and marked "Illustrative Exhibits 106, 107, and 108, Dec. 16, 1907.")

Q. Now, have you got a sample of a braid made in part of imitation horsehair yarn and in part of glazed cotton yarn?

A. Yes. [Witness produces sample.]

(Said sample is offered in evidence and marked "Illustrative Exhibit 109, Dec. 16, 1907.")

Q. You say these two varieties are frequently used interchangeably?

A. Yes.

Q. Difficult to distinguish them in the finished article?

A. Yes; only an expert could find it out.

Q. Did you bring at my request a sample of glazed cotton yarn?

A. Yes. [Witness produces sample.]

(Said sample is offered in evidence and marked "Illustrative Exhibit 110, Dec. 16, 1907.")

Q. How many years' experience have you had in the manufacture of braids?

103 A. Over thirty years.

Q. And during that period you have used glazed cotton and artificial horsehair yarns in large quantities?

A. Not the artificial horsehair for the thirty years, because it only came out about eight years ago.

Q. The glazed cotton yarns you have used for a good many years?

A. For thirty years.

Q. What are yarns a class used for?

A. They are used to make braids, shoe laces, ribbons, textile articles.

Q. Those are the uses with which you are familiar?

A. Yes, sir.

Q. What distinguishing quality must a yarn possess in order to be fit for use?

A. It must be strong enough to be tied, to be wound, to be put on braiding machines and looms and knitting machines.

Q. Did you import and enter between February and May, 1906, artificial horsehair yarns?

A. Yes.

Q. Some of your shipments returned by the customs officials under paragraph 302 as cotton yarn at six cents a pound?

A. Yes.

Cross-examination by Mr. NICHOLS:

Q. Do you know how these glazed cotton yarns are made?

A. Yes.

Q. Do you know how many twists there are in them?

A. No, because we buy the yarn as a yarn from the spinner; then we dye and polish it.

Q. Before you received it it was a yarn?

A. Yes.

Q. You made it into a different kind of yarn?

104 A. Well, the yarn was made into a polished yarn; it was dyed and polished.

Q. You got it in the soft form?

A. Yes; we get it in the gray and dye it and glaze it.

Q. You don't know how many twists there were before you received it?
A. No.
Q. Do you have any idea?
A. Not at all.
Q. A considerable number?
A. I don't know at all. We buy it from the spinner.
Q. After you had dyed and glazed it it was article adapted to a different use than what it was before, I suppose?
A. Yes, certainly; you couldn't use a gray yarn for the same things that you use a polished cotton.
Q. Do you know of any other kind of yarn that is similar to this polished cotton yarn?
A. Well, the imitation horsehair is, artificial horsehair, and what they call the coated yarn.
Q. But other cotton yarns are not similar to that coated yarn?
A. No; it is just a polished cotton.
Q. A very special product?
A. A polished cotton.
Q. What is the coated cotton yarn used for?
A. For the same purposes, to make hat braids and similar braids.
Q. It is used only for braiding?
A. As far as I know; it might be for other purposes; it might be used on a loom; they might choose to make a loom product out of it.

105 LIONEL F. STRAUS recalled, testified as follows:

By Mr. WASHBURN:

Q. In making a hair cloth, is it woven on a loom?
A. Yes, sir.
Adjourned.

ALBERT ECKSTEIN, *vs.* THE UNITED STATES. } No. 4335.

Hearing resumed December 18, 1907.
Present: Albert H. Washburn, esq., for the importer; J. Osgood Nichols, esq., asst. U. S. attorney for the United States.
(Same stipulation as to swearing witnesses by U. S. Commissioner Shields.)

LUDWIG LITTAUER, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. Mr. Lattauer, with what concern are you connected?
A. Same name; Ludwig Littauer.
Q. What business are you engaged in?
A. Yarn.

Q. Wholesale quantities?

A. Yes, sir.

106 Q. How many years have you been engaged in the yarn business?

A. Twenty-eight years.

Q. Tell us what kinds of yarn you carry?

A. Silk, cotton, worsted, artificial silk, artificial horsehair, polished threads, glazed cotton yarns, tinsel yarns.

Q. Referring to glazed cotton yarns, are they an important article of commerce?

A. Yes; some of them are.

Q. And you have handled them for a good many years?

A. Yes.

Q. What are they used for?

A. They are used for weaving tapes, braids, braiding, filling in ribbons, and so on.

Q. Do they correspond to any use to which artificial horsehair yarns are put?

A. Yes.

Q. What is that?

A. They are often used to imitate the artificial horsehair, and also to mix with it.

Q. I show you Illustrative Exhibit 106, Dec. 16, 1907; do you recognize that as a braid made of glazed cotton yarn?

A. Yes, sir.

Q. I show you Illustrative Exhibit 109, which purports to be a braid made in part of glazed cotton and in part of imitation horsehair; do you recognize that as a kind of braid which is made of the mixture that you have referred to?

A. Yes; contains both glazed thread and imitation horsehair.

Q. Listen to the Century Dictionary definition of "yarn:" "Originally thread of any kind spun from natural fibres, vegetable or animal, or even mineral; now more usually thread prepared for weaving as distinguished from sewing thread of any sort." Does this definition correspond with the trade understanding of yarn prior to 1897?

107

A. It does in part; because the yarns are used for other purposes besides weaving, such as knitting, braiding, and embroidering.

Q. Measured by your amended definition would artificial horsehair like the official exhibits here in suit [now shown to witness] have been regarded as yarns by the trade in July, 1897?

A. Yes.

Q. Is polished cotton yarn another name for glazed cotton yarn?

A. I think they are used synonymously; I think they are both meant to stand for the same article.

Q. Do you handle cotton yarns?

A. Yes.

Q. In wholesale quantities?

A. Yes.

Q. And have for many years?
A. Yes, sir.
Q. Cotton yarns of various kinds?
A. Yes, sir.
Q. Look at the official exhibits here in suit; are they single or doubles, measured by the cotton schedule?
A. [After examining said exhibits.] They are singles.
Q. By the way, what kind of artificial horsehair yarn do you carry?
A. We carry the Elberfeld quality, and the Frankfort, that is Kelstenbach.
Q. That is to say, the Fremery and Chardonnet processes?
A. The Fremery process is the Elberfeld, and Chardonnet is the Kelstenbach.
Q. Take artificial horsehair yarns like Exhibits 5 and 6 in suit, of 300 and 350 denier, to what numbers of the cotton schedule would they correspond?
108 A. 350 denier would be equal to about a 15 or a 16 single cotton yarn.
Q. And a 300 denier?
A. That would be equal to 17 or 18 single; perhaps a little over that.
Q. The Chardonnet goods that you handle are of what grade?
A. The Middle A and Middle B. They correspond about to the 300 denier and 350 denier.

Cross-examination by Mr. NICHOLS:

Q. Do you know of anything else other than this artificial horsehair which you call a yarn, where it is composed of a single continuous fibre as is the horsehair?
A. Well, I should say polished cotton thread.
Q. Do you means to say a polished cotton thread answers to my question of a single solid continuous fibre?
A. Yes; I think so. It has been finished in such a way that it is a solid fibre.
Q. Every thread is continuous; but is it solid?
A. It is solid.
Q. Do you mean to say that it is not composed of a number of cotton fibres twisted together into the form of a continuous thread or filament?
A. No; I don't mean to say that.
Q. Then why do you call it solid?
A. Because it has been covered over with a gelatine-like substance, very similar to the artificial horsehair.
Q. Now, I will ask you again whether you know of any yarn except artificial horsehair, if that be a yarn, which is composed of a solid fibre, not composed of other fibres twisted or joined together in any way?
A. Well, I would not be able to say that outside of the polished yarn, except you want to take a silk yarn.

109 Q. I ask you for an answer, yes or no. Do you know of a single one; if so, name it?

A. No, I do not?

ADOLPH KELLER, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. Mr. Keller, what concern are you connected with?

A. Dieckerhoff, Raffloer & Co.

Q. How long have you been with them?

A. Over twenty years.

Q. Their business is what?

A. Importers of general notions.

Q. Do they import yarns?

A. Yes.

Q. In wholesale quantities?

A. Yes, sir.

Q. What kind of yarns?

A. Embroidery, mending, artificial silk, artificial horsehair yarns.

Q. Deal in all these different varieties that you just mentioned in wholesale quantities?

A. Yes.

Q. What variety of artificial horsehair yarn do you carry?

A. We carry two grades: one is called "Sirius" and the other "Meteor."

Q. The Meteor brand is the *the* Chardonnet-Kelstenback brand?

A. Yes.

Q. And the Sirius is the Elberfeld-Fremery?

A. Yes.

Q. What are yarns used for?

A. Braiding, knitting, embroidering.

Q. What essential characteristic must a yarn possess to be fitted for the uses of a yarn?

110 A. Well, it has got to be made up so that you are able to use it for the purposes of braiding or embroidering and knitting.

Q. Would that apply to its being wound and unwound?

A. So that you can wind it and unwind it.

Q. Are you familiar with glazed cotton yarns?

A. Yes.

Q. Polished cotton yarns another name for them?

A. Well, I call them eisen*g*arn.

Q. What use of glazed cotton yarns corresponds with the chief use of artificial horsehair yarns?

A. I should think it is—I don't think, I know that it is being used at the present time entirely as a substitute for artificial horsehair yarns.

Q. That is, glazed cotton yarns?

A. Glazed cotton yarns.

Q. In making what?

A. Braids for millinery purposes.

Cross-examination by Mr. NICHOLS:

Q. Then, as I understand it, the glazed cotton yarn is used as a substitute and imitation of imitation horsehair?

A. Yes.

Q. The imitation horsehair isn't an imitation of the glazed cotton yarn or substitute for it?

A. Well, you could use it vice versa. The reason why they use the glazed cotton yarn at the present time is on account of the cheapness of the yarn. Whereas an artificial horsehair yarn to-day is worth about $2.25 a pound, the glazed cotton yarn is worth only $1.25. So they mix it, and in the cheaper grades they will use the glazed cotton yarns entirely. There is a difference of fifty per cent nearly in the value of the article.

Q. Do you know of any other yarn than this imitation horsehair, if you call that a yarn, which is composed of a single solid homogeneous thread?

A. There is not. I don't know of any.

111 Q. That is, it is unique in that respect?

A. Cotton yarn is a twist.

Q. It is not a single solid thread?

A. No.

Q. It is composed of twisted fibres?

A. All the yarns are.

Q. Do you consider that essential to the definition of a yarn, that it is something composed of twisted fibres so as to form a continuous thread?

A. That is only one.

Q. But they all have it?

A. Yes. But there are other essential features, you know; but every other essential feature will appear in the artificial horsehair.

Q. Isn't the artificial horsehair bought and sold as artificial horsehair?

A. And yarns. They are both synonymous.

Q. What is the difference between the application of the word "yarn" to the cotton and other fibres and to the horsehair, if it is applied to that?

A. If anybody comes in and asks "Have you got any yarns?" we inquire, "What do you want to see?"

Q. Do you mean to say that a purchaser comes in and asks if a man has got any yarns in his shop, meaning if he has got any flax or cotton? If he wants artificial horsehair, doesn't he ask for artificial horsehair?

A. There are a great many concerns that do not know that we handle yarns, as we have not got the great variety of yarns that other houses have.

Q. I am not asking about your practice, but what the commercial usage is. This artificial horsehair is called artificial horsehair, isn't it? Isn't it bought and sold as artificial horsehair?

A. Yes, sir.

Q. Isn't, as a matter of fact, the word "yarn" very little applied to it?

A. Oh, no; I wouldn't say that; it is used quite frequently.

112 Q. But not universally, of course?

A. I wouldn't say that.

Q. You don't know?

A. I wouldn't say that in every instance it is called a yarn; in some instances the man would say "artificial horsehair;" in a great many instances they will say "horsehair yarns," without even mentioning the "artificial" end of it.

Q. Isn't it exceptional to call this artificial horsehair a yarn?

A. No, sir; that is all I would call it; I don't know what else you could call it.

Q. Let me ask you if this glazed cotton thread is not, as a matter of fact, only used for making articles in imitation of this artificial horsehair?

A. No, sir. I see lots of it for the use of making shoe strings.

Q. What other purpose is it used for?

A. Shoe laces is one; we use it in corset laces; and as I say, now we are taking the two articles together. It is used as a substitute for artificial horsehair in the manufacture for millinery purposes.

Q. Are yarns usually employed directly in weaving fabrics, or are they spun into thread often?

A. Why, you have got to have the thread—you have got to spin your thread to get the yarn.

Q. Spin the thread out of yarn?

A. No; not out of yarn; you have got to make the thread to make the yarn; there may be several ply threads to make the yarn.

Q. Isn't the yarn composed of several of those threads?

A. Yes; there are singles and doubles.

By Mr. WASHBURN:

Q. Single would be just a single thread?

A. Just a single thread; and that, of course, is a continuous performance of small fibres of either flax or cotton.

113 LOUIS ROBISON, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. WASHBURN:

Q. With what concern are you connected?

A. G. Robison & Son.

Q. Are you a member of the firm?

A. Yes, sir.

Q. How long has this firm been doing business?

A. Twelve years.

Q. What is the business?
A. Yarn business.
Q. And during that time have you been familiar with yarns?
A. Yes.
Q. Dealt in them in wholesale quantities?
A. Yes.
Q. What kind of yarns do you carry?
A. We carry cotton yarns, polished or glazed yarns, artificial silk yarns, and artificial horsehair yarns, tinsel yarns. That is about the scope.
Q. What kind of horsehair yarns do you carry?
A. Both the Frankfort and Elberfeld brands, as they are called; that is to say, the Fremery and the Chardonnet.
Q. You have been to the factories, have you, more or less, in Europe?
A. Yes; I visited two.
Q. You have some familiarity with the process?
A. Yes.
Q. Whether or not the Fremery is what is known as the cup-ammonium process?
A. Yes; that is the cup-ammonium process.
Q. You have been to the Chardonnet factory, I believe?
A. I have been to the Kelstenbach factory.
Q. Referring to artificial horsehair, to what use is it put?
114 A. To the manufacturing of braids, principally for millinery purposes.
Q. Does it correspond to any use of glazed cotton; and if so, what?
A. Why, yes; they use glazed cotton to make millinery braids. They now mix glazed cotton yarns with horsehair in the manufacture of millinery braids.
Q. Is glazed or polished cotton yarns an important article of commerce?
A. Yes.
Q. And you import them from time to time?
A. We do.
Q. Have you brought some samples, at my request?
A. Yes. [Witness produces samples.]
Q. Referring to the sample which you now hold in your hand, is that something that you got in the course of your import business?
A. Yes.
Q. What is it?
A. That is a coated yarn?
Q. What kind of core?
A. Cotton core.
Mr. WASHBURN. I offer that sample in evidence.
(Same received and marked "Illustrative Exhibit 111, Dec. 18, 1907.")
Q. Have you got other samples?
A. Yes.

Q. Produce them?

A. Yes. I have a sample here of what is known as a 40 single polished yarn.

Mr. WASHBURN. I offer that sample in evidence.

(Same received and marked "Illustrative Exhibit 112, Dec. 18, 1907.")

The WITNESS. And I also have a sample of an 18 single special lustre yarn. It is also a polished yarn which has been given an especial high lustre, and we have therefore called it a special

115 lustre yarn.

Mr. WASHBURN. I also offer that sample in evidence.

(Same received and marked "Illustrative Exhibit 113, Dec. 18, 1907.")

Q. What are yarns, as a class, used for?

A. For weaving and knitting and braiding, embroidering; that is about all the trades that we cater to and that we know.

Q. What indispensable characteristic must a yarn possess to fit it for its uses?

A. Strength.

Q. You are familiar with the yarn trade, are you?

A. I am.

Q. Artificial horsehair carried by yarn people?

A. Yes.

Q. What raw material is used in making artificial horsehair?

A. Cotton.

Cross-examination by Mr. NICHOLS:

Q. Do you know of any yarn that is not composed of a number of fibres twisted together?

A. No.

Q. That is a characteristic of yarns in general, that they are made from threads twisted together to form the yarn?

A. The polished yarns and the glazed yarns that we handle are all in one length; they are singles.

Q. I don't think you understand exactly what I mean. The glazed yarns are composed of a large number of cotton fibres twisted together to form a single continuous thread, are they not?

A. In the original process of manufacture, you mean, when the yarn is spun?

Q. Yes.

A. Yes.

116 Q. Then that is coated over with some substance so as to form something which imitates this artificial horsehair?

A. Yes.

Q. And in general it is used for manufacturing similar articles—braids for hats, and so on?

A. Yes.

Q. Now, the artificial horsehair is sold as artificial horsehair, without the use of the word "yarn," usually, isn't it?

A. No; I wouldn't say that. We, in the course of our business, introduced artificial horsehair as a natural growth and incident of our business; we are in the cotton-yarn business originally.

Q. But you handle other things now, as your business has grown?

A. Yes; but we found it necessary to handle artificial horsehair yarn, because it went along with our business.

By Mr. WASHBURN:

Q. The other things that you handle are yarns?

A. All yarns; yes.

By Mr. NICHOLS:

Q. This coated cotton yarn, as you called it, is comparatively expensive yarn, isn't it?

A. You refer to this article?

Q. That brown article. [Illustrative Exhibit 111.]

A. Yes. Will you tell me what you mean by "comparatively expensive?"

Q. I suppose that the bulk of yarns which are handled in the trade, the cotton yarns, are worth very much less per pound than this coated or glazed or polished yarn.

A. I will answer your question this way, that we handle yarns from twenty cents up to four dollars a pound; so that the question is rather ambiguous.

117 Q. You are not able to form anything like an average price for yarns?

A. Yes; I am able.

Q. Would you be able to say of one class of yarns that they were expensive and another that they were cheap?

A. Yes.

Q. And what I mean is wouldn't you class these coated or polished yarns among the expensive yarns?

A. No.

Q. How much do you get a pound for this Illus. Exhibit 111, assuming that you handle it?

A. We are not handling it any more; we handled it last year; we sold it for $1.50 a pound.

Q. Can you tell me, roughly speaking, how much cotton is worth a pound?

A. Cotton or yarn?

Q. Just cotton.

A. Twelve cents now.

Q. Then what is the next process of manufacturing the cotton into the yarn?

A. My answer will be very unintelligent, because I am not familiar with that. They take the raw cotton and they break it and put it through a process, and then take the staples and twist them together and thereby form a yarn. That is as near as I can tell you.

By Mr. WASHBURN:

Q. You have no intimate familiarity with the spinning of cotton?

A. No.

By Mr. NICHOLS:

Q. Isn't that yarn which is formed by that simple process, before anything like glazing or any special manipulation has been had, worth say twenty to thirty cents a pound?

A. What number do you refer to?

118 Q. I am referring to the more ordinary commercial grades.

A. They are worth all the way in singles I should say from twenty cents up to two dollars.

By Mr. WASHBURN:

Q. That is unglazed cotton yarn?

A. Unglazed cotton yarn. I am talking of yarn that has been spun in singles.

Q. And unglazed?

A. Unglazed.

By Mr. NICHOLS:

Q. In general the higher number of threads that are used in the spinning of yarns the more expensive the yarns are, aren't they?

A. Yes.

Q. And the singles would be the least expensive, I mean as a rule?

A. No; I referred to singles when I answered your previous question; I referred to singles that were worth twenty cents a pound and singles that were worth two dollars a pound.

Q. They run up to 200 and 300?

A. You can get singles from one single up to 250 singles.

Q. As the number increases the value of the yarns increase?

A. Yes.

By Mr. WASHBURN:

Q. Glazed cotton yarns were on the market long prior to 1897, I believe?

A. Yes.

Q. When you stated that all yarns have a twist, did you mean to exclude artificial horsehair as a variety of yarn?

A. I don't think that artificial horsehair has any twist.

Q. But you regard it as a yarn nevertheless?

A. Oh, certainly.

Adjourned to December 23, 1907, 10.30 a. m.

119 ALBERT ECKSTEIN *vs.* THE UNITED STATES. } No. 4335.

Hearing resumed December 23, 1907.

Present: Albert H. Washburn, esq., for the importer; J. Osgood Nichols, esq., asst. U. S. attorney, for the United States.

(Same stipulation as to swearing witnesses by U. S. Commissioner Shields.)

ALEXANDER KING, called as a witness on behalf of the United States, being duly sworn, testified as follows:

By Mr. NICHOLS:

Q. Mr. King, are you familiar with the subject of cotton yarns?

A. Yes, sir.

Q. And how long have you been familiar with them?

A. Fifty years.

Q. In the wholesale trade?

A. Yes, sir; manufacturing.

Q. And you were familiar with them in 1897; that is, ten years ago?

A. That is, not quite as much, as I had partially retired from active business in 1897.

Q. But you had been familiar with cotton yarns and were then to some extent?

A. Yes; from 1856 down to 1895 or 1896, about forty years.

120 Q. Will you briefly describe cotton yarns? Explain briefly what was generally understood in the wholesale trade by the term cotton yarns.

A. Yarns that have been spun and twisted one or more plys from raw cotton.

Q. Will you describe the process of manufacturing yarns out of the raw cotton, very briefly, what has to be done?

A. It goes through the various processes of the opening and drawing frames, and then other intermediate processes until it gets to be spun into single yarn.

Q. What do you mean by the spinning process?

A. It is having the fibres put together, by carding and combing; they get the staple cotton twisted in so it makes it continuous thread.

Q. You referred to twisting; is that always necessary to the manufacture of a cotton yarn that the fibre should be twisted?

A. If it is more than one ply. A single yarn is spun, that is, it goes through the spinning process, and you may spin it to a certain number anywhere from the greatest to the finest number.

Q. Does the spinning process require that the fibres should be twisted?

A. Oh, they have to be twisted, certainly; this spinning involves the twisting of the fibre in the process of knitting the staple together.

Q. So that a cotton yarn must always necessarily have been through a twisting process?

A. Certainly. A single yarn has been through a twisting process.

Q. How many of those twists to an inch would be requisite to make cotton yarn?

A. According to the number. In spinning a single yarn, that is a one ply yarn, the spinning frames will have anywhere from ten to thirty turns to the inch.

Q. I show you the exhibits here in this case which represent the merchandise in suit, and ask you if in your experience with

121 cotton yarns this merchandise resembles cotton yarn?

A. No; not in the least.

Cross-examination by Mr. WASHBURN:

Q. You have never dealt in artificial horsehair yarns, have you
A. Never.
Q. Your testimony in substance is that a cotton yarn has s twist; that is the point, isn't it?
A. Yes.
Q. A cotton yarn of two or more plys is made by twisting tw more single threads?
A. Made by twisting two or more single strands.
Q. And a single cotton yarn is made by interlocking the fibre cotton?
A. The fibres of cotton.
Q. By the spinning process?
A. By the spinning process.
Q. And the object of all that, one object at least, is to give certain tensile strength?
A. Yes, sir.
Q. And it wouldn't be a yarn unless it had such tensile strengt
A. No, sir. It would have no tensile strength without the twis process.
Q. You don't know anything about the constituents of arti horsehair yarn, do you?
A. I do not.

HENRY W. SCHLOSS, called as a witness on behalf of the U States, being duly sworn, testified as follows:

By Mr. NICHOLS:

Q. What is your business, Mr. Schloss?
A. President of the Castle Braid Company.
122 Q. How long have you been familiar with cotton yar
A. Thirty-five or forty years.
Q. Have you been handling them in the wholesale trade d that time?
A. Yes.
Q. Will you briefly describe what you consider to be ess characteristics of a cotton yarn?
A. In the process of manufacture?
Q. Yes; describe cotton yarn.

By Mr. WASHBURN:

Q. Have you manufactured cotton yarn?
A. No; but I have been in mills where it is made and I studied up.

By Mr. NICHOLS:

Q. (Question repeated.) Describe cotton yarn.
A. Do you want me to go into the process of manufacture?
Q. Describe those things that are essential.

A. Cotton yarn is made from raw cotton, which goes through a cleaning process, and then it is put on machines that will comb; from a combing machine to roving, and from a roving it is drawn to a fine thread. It is made from the raw cotton and it takes a number of fine fibres in order to make, commercially speaking, thread. The thread is used and sold in singles and different plys.

Q. A ply is made by twisting two or more singles together, I suppose?

A. It is.

Q. Mr. Schloss, are you familiar with this material known as artificial horsehair, which is the subject of this action?

A. I am.

Q. And you have examined these samples which represent the goods in suit?

A. Yes.

123 Q. Now, is that merchandise in any way similar to cotton yarns?

Mr. WASHBURN. Objected to on the ground that it calls for a conclusion of law.

(Answer taken subject to the objection.)

A. It is not.

Cross-examination by Mr. WASHBURN:

Q. Mr. Schloss, are you familiar with glazed cotton yarns?

A. I am.

Q. Sometimes used for making hat braids?

A. Imitation straw braids used for hats, making hats.

Q. This artificial horsehair yarn is used for making braids, is it not?

A. It is.

Q. And the two braids resemble each other, do they not?

A. They would in a way, but——

Q. So that as to use there is similarity, isn't there?

A. But they wouldn't classify it——

Q. One moment. So as to use there is that similarity?

A. There is a similarity, but they would not take it for cotton; it couldn't be sold as cotton.

Q. You know that glazed cotton and artificial horsehair are used interchangeably, do you not?

A. They are.

Redirect examination by Mr. NICHOLS:

Q. This artificial silk is made always out of a number of filaments twisted together?

A. Usually made out of different filaments.

Q. Twisted together?

A. Twisted together.

124 Q. This artificial horsehair is always a single filament?

A. A single filament.

E. C. PENNAL, called as a witness on behalf of the United States, being duly sworn, testified as follows:

By Mr. NICHOLS:

Q. Have you been engaged in handling cotton yarns at wholesale?
A. Cotton yarns; yes.
Q. In 1897?
A. No.
Q. How far back?
A. Six years.
Q. You are familiar with the manufacture and character of cotton yarns of all kinds, are you?
A. No; I am not familiar with the manufacture of yarns; I am simply a dealer.
Q. But in dealing in them you acquire familiarity in general with how they are manufactured?
A. I wouldn't say—yes; in a general way, yes; but I couldn't explain anything about how they are manufactured.
Q. Your experience in handling cotton yarns in wholesale quantities would enable you to identify, recognize, cotton yarns of all kinds, would it not?
A. Recognize cotton yarns, yes; in the gray, not always converted.
Q. Referring to the merchandise in suit here, these samples before you, have you examined those samples?
A. Yes.
Q. Would you be able to state from your experience and knowledge of cotton yarns whether cotton yarns are in any way similar to that merchandise?

125 Mr. WASHBURN. Objected to on two grounds; first, as calling for a conclusion of law, and, second, on the ground that this witness' commercial competency has not been established.

(Answer taken subject to the objection.)

A. I should say they are not similar; no similarity.

Cross-examination by Mr. WASHBURN:

Q. Never handled artificial horsehair yarn, did you?
A. Never.
Q. Don't know anything about its constituents?
A. Nothing.
Q. And your experience with cotton yarns has been confined to cotton yarns in the gray?
A. Wholly.

HARRY MANLEY, called as a witness on behalf of the United States, being duly sworn, testified as follows:

By Mr. NICHOLS:

Q. Have you been familiar with cotton yarns for some time?
A. Yes; been dealing about twenty years in them.
Q. In wholesale quantities?
A. Yes; importer and salesman.

Q. Does your familiarity extend to all kinds of cotton yarn?

A. Just in the gray; single and two plys.

Q. Would you be able to recognize and identify all descriptions of cotton yarns that are used in the trade?

A. I could tell the difference between single and the two ply.

126 Q. What I mean more particularly is if anything was shown you you would feel competent from your extensive experience to state whether it was or was not cotton yarn?

A. I think I could tell a cotton yarn.

Q. Would you be able to tell, for instance, if you were asked whether this merchandise (meaning so-called imitation horsehair in suit) was or was not similar to cotton yarn?

A. I have never handled that stuff at all.

Q. Assuming that you have not handled the stuff, would your experience in cotton yarn enable you to say whether it was similar or not?

Mr. WASHBURN. I object on the ground that the witness' competency has not been established, and as calling for a conclusion of law.

(Answer taken subject to the objection.)

A. I have never seen any cotton yarn like that.

Cross-examination by Mr. WASHBURN:

Q. You have not handled glazed cotton yarns, have you?

A. We handle some glazed, yes.

Q. Can you tell the difference between glazed cotton yarn and artificial horsehair yarn?

A. No, sir.

Q. Do you know from your experience in handling glazed cotton yarns that they closely resemble in appearance and use artificial horsehair yarns?

A. No; the artificial silk has got such a high lustre it wouldn't be possible to confuse the two.

Q. You are talking about artificial silk; my question referred to artificial horsehair.

A. I don't know either of them; I don't know the difference between either of them.

Q. Is that made from the same kind of material, in your
127 opinion [referring to Illustrative Exhibit 109]?

A. I wouldn't like to swear whether it was or not; it seems to be a very high lustre if it was cotton.

By Mr. NICHOLS:

Q. That does not look like ordinary cotton yarn?

A. It has got such a tremendous high lustre.

By Mr. WASHBURN:

Q. But you wouldn't say that cotton yarn is different from artificial horsehair?

A. I know absolutely nothing about artificial horsehair.

Q. Or its uses?
A. No, sir.

By Mr. NICHOLS:

Q. But you are able to state from an inspection of the merchandise in suit that whatever it is called it does not in any way resemble cotton yarn?
A. I shouldn't dare sell that as cotton yarn. [Referring to merchandise in suit.]

By Mr. WASHBURN:

Q. Do you know whether glazed cotton yarns are used for making hat braids?
A. That I don't know.
Q. Have not handled much of it recently?
A. No, sir; we sell quite a bit for shoe laces.
Q. Do you know whether artificial horsehair yarns are used for making shoe laces?
A. That I do not.

By Mr. NICHOLS:

Q. Do you know whether glazed silk yarns have a good deal of tensile strength and toughness?
A. I have never handled them.
Q. You would assume that a yarn that was used to make shoe laces was pretty tough?
128 A. There is some pretty cheap stuff sold for shoe laces; pretty weak stuff.
Q. Is the fact that anything was used to make shoe laces of very little indication of its character?
A. Certainly. They sell some pretty cheap cotton yarns for it.

By Mr. WASHBURN:

Q. Since you have been asked on the question of similarity, I show you a shoe lace made of glazed cotton [referring to Illustrative Exhibit 108]. You have seen that before?
A. There was a sample shown me the other day; I couldn't say it was this one.
Q. And I also show you a shoe lace made of artificial horsehair [showing witness Illustrative Exhibit 104]; pretty close similarity so far as you can tell as to appearance and use with Exhibit 108?
(Objected to as leading.
Answer taken subject to the objection.)
A. What is there about the use of that? I should say that the use is about the same. They are both shoe laces.
Q. And also similarity in appearance?
A. One is brighter than the other. This is a very bad light; you couldn't tell anything by this light.

By Mr. NICHOLS:

Q. You would require a different light and a different examination to answer these questions; that is, satisfactorily?

A. Yes.

Q. There is a great variety in the materials and qualities that are used in making shoe laces?

A. Yes, sir; there is a German yarn and an English yarn. The English yarn is much brighter than the German.

Adjourned.

129 ALBERT ECKSTEIN *vs.* THE UNITED STATES. } No. 4335.

Hearing resumed January 31, 1908.

Present: George J. Puckhafer, esq., for the importer; J. Osgood Nichols, esq., assistant U. S. attorney, for the United States.

(Same stipulation as to swearing of witnesses by U. S. Commissioner Shields, etc.)

JOSEPH A. DEGHUEE, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. PUCKHAFER:

Q. What is your profession?

A. Analytical and consulting chemist.

Q. Will you state briefly your professional education and practical experience?

A. I studied at Columbia University, taking the course in chemistry in the scientific department, from which university I graduated in 1890. After graduation I took a post-graduate course, also in chemistry, leading to degrees of master of arts and doctor of philosophy; the doctor's degree I took in 1893. After graduation I became private assistant to Prof. Charles F. Chandler, of Columbia University, in the department of chemistry, and also acted as his college assistant. I was Dr. Chandler's assistant for approximately six years. I then entered the New York City department of
130 health as assistant chemist; in 1902 I became chief chemist of the department, which position I held for two years. I then joined Dr. Ernst J. Lederle, who had been commissioner of health. My present position is consulting and analytical laboratory work at the Lederle Laboratories, 39 East 38th street, New York City.

Q. Do you recall conducting various experiments and tests in conjunction with Dr. Lederle in the preparation of the case of Hardt von Bernuth on artificial silk?

A. Yes.

Q. Are you informed of Dr. Lederle's whereabouts at the present time?

A. He is in Europe. The last time I heard from him he was in Naples.

(Counsel for importer states that if Dr. Lederle were in the jurisdiction of the court he would be produced at this time.)

Q. Did you at the request of our Mr. Washburn analyze certain samples of artificial horsehair marked "Chardonnet" and more particularly identified as Exhibits 1 to 4, protest 146247, Feb. 24, 1906; Exhibit 1, 146247, Feb. 21, 1905; Exhibit 2, 138312, Feb. 21, 1905; and Exhibits 2 and 3, 138312, Feb. 23, 1906; also two samples marked "Fremery" and more particularly identified as Exhibits 6 and 7, 146247, Feb. 24, 1906?

A. I did.

Q. I show you what purports to be a letter addressed to our Mr. Washburn, on letter head of the Lederle Laboratories, and direct your attention to the signature subscribed thereto, and ask you if you recognize it?

A. This is a letter I sent to Mr. Washburn on January 24 of this year.

Q. Is that your report on the analysis of these various samples which you made?

A. My reports of analyses of the total of Exhibit 3, 146247,
131 Feb. 24, 1906, and Exhibit 5, 146247, Feb. 24, 1906, and reports the figures; and the other analysis had been made without giving the figures.

Q. Do you testify now under oath that the statements made in this report are true and correct to the best of your knowledge and belief?

A. They are.

Mr. PUCKHAFER. I offer this report in evidence.

(Same received and marked "Exhibit 114, Jan. 31, 1908.")

Q. In the analysis of Exhibits 3 and 5, 146247, Feb. 24, 1906, the exhibit as stated in your report, appears an item there of nitrogen to a fraction of one per cent; it further appears from the record that sample Exhibit 3 is produced by the Chardonnet process. Can you explain the presence of that nitrogen?

A. I can.

Q. Please do so.

A. The nitrogen is due to a minute amount of nitrocellulose still remaining in the fiber, due to the imperfect denitration process applied to the nitrocellulose in reconverting it into cellulose.

Cross-examination by Mr. NICHOLS:

Q. Doctor, as I understand the report, without referring to it except as I have glanced at it, it is in substance that the samples which you have examined were composed of something in excess of nine per cent of hygroscopic moisture, a trace of ash as residuary product of the process which has been employed, and the balance, about 90 per cent of organic matter, which you state to be practically cellulose. Now, that cellulose, as I understand, has been to some extent, not wholly, decomposed in the process by the use of nitrogen, and then as a further process the nitrogen has been removed, and the re-
132 sult is substantially cellulose in its original form.

A. It is cellulose in its original chemical form; its physical condition has been changed.

Q. I want to inquire more particularly into that physical change of the cellulose. Cellulose, I suppose, is a chemical formula in one sense?

A. Yes, sir; it is a chemical compound. It is a definite chemical compound which has a definite composition.

Q. Isn't it true that it can take various physical forms, as, for instance, take a simple element, carbon, that takes different physical forms as the diamond or graphite; so that this somewhat complicated molecule of cellulose can take various forms as it is found in nature or otherwise?

A. Yes.

Q. What has been the respect in which the physical form of the cellulose is changed in this process to which you have referred in the report?

A. In a cotton fiber, for instance, the cellulose for cotton is essentially cellulose, practically pure cellulose, but the cellulose there has a certain structure which can be recognized under the microscope; it has a form, a shape.

Q. That is a characteristic peculiar to cotton?

A. Characteristic of cotton; it is characteristic that cotton, for cotton fiber can be recognized under the microscope.

Q. That is to say, cellulose, when it is found in the cotton fiber, would be referred to as cotton rather than as cellulose, because it is in the characteristic form which is peculiar to cotton?

A. It would be a form of cellulose known as cotton.

Q. Without going too much into chemical phraseology, what happens to this cellulose, assuming that it is originally in the form of cotton?

A. Without going into the details of the various steps, the change that has been produced is due to the solution of this cellulose,
133 dissolving cellulose in a proper medium, making a liquid of it, and then pressing this liquid into fibers; so that the cellulose in this finished condition is what you might call a structureless fiber. It is like a jelly that has been forced into a thread; and when looked at under the microscope laterally, that is, without making a section of it, it looks like a structureless cylinder, having no particular form whatever except a cylindrical mass.

Q. Then the characteristics of cellulose, as it originally appeared in the cotton, have been radically modified, if not destroyed, by the process?

A. Its physical characteristics, as viewed under the microscope, have been destroyed; yes.

Q. You have referred to cellulose in the form of cotton as being employed in this process; what other forms of cellulose could be employed in this chemical process to result in the substance which you have examined?

A. From the chemical standpoint any form of cellulose could be employed. As to whether it is commercially possible from the economic point of view, I am not prepared to say. I don't know of any process in which anything else but cotton is used for making this

fiber, although it may be. I am not sufficiently informed to answer that question fully.

Q. Your information on this subject, I presume, is derived from your connection with the testimony in these cases, isn't it, more particularly?

A. And general reading of the subject.

Q. I am speaking of artificial horsehair or silk.

A. I have kept track of the literature more or less ever since.

Q. Your testimony is based upon the assumption that as a matter of fact cotton is at least generally the raw material from which this cellulose is obtained in its ultimate shape?

A. So I have always understood.

134 Q. But I also understand you to say that you don't know of any chemical reason why some other form of cellulose shouldn't be used as the raw material?

A. I do not.

Q. Do you know of any reason why flax couldn't be used?

A. No; I do not. When I say "no reason," I mean no chemical reason; there may be economic reasons about which I know nothing.

Q. Your knowledge is limited to a chemical knowledge?

A. My knowledge is limited to a chemical knowledge.

Q. You are not a manufacturer?

A. I am not a manufacturer.

Q. For all you know, they may use flax or some other form of cellulose?

A. Yes.

Q. This cellulose is a substance of very wide distribution in nature, isn't it?

A. It is.

Q. Could you tell, in general, where it is to be found?

A. Practically it forms the cell wall; it is the material which forms the cell wall in all vegetable matter, practically all vegetable matter.

Q. And it is of very wide distribution?

A. It is.

Q. You said it assumes various physical characteristics, although it has one chemical formula in common. Is it true that it forms others physical characteristics; that is to say, such as flax, or as ordinary wood?

A. Why, yes; cellulose is a chemical compound; it is a material and it can appear in any number of physical forms, just as a million bricks could appear in any number of different forms of architecture, though it is still clay.

135 Q. And it could form the shell of a building just as this cellulose forms the shell of a vegetable cell?

A. Yes.

Q. And it could be made into bricks and any other form?

A. It would still be clay; and this is still cellulose, although it may appear in any number of physical forms.

Q. Getting down to a mere chemical illustration, clay is always clay and cellulose is always cellulose?

A. Yes.

Q. But now, to use another illustration, take sugar; doesn't sugar, although it is always sugar, appear in various characteristic forms as grape sugar or beet sugar or cane sugar?

A. I would take exception to your illustration. It would appear as beet sugar and cane sugar, but not as grape sugar. Grape sugar is a different sugar from the others you mentioned.

Q. There are sugars and sugars?

A. There are different kinds of sugars.

Q. We call them, in the general parlance, sugars?

A. Yes.

Q. But you, as a chemist, have found some distinction?

A. Yes.

Q. Is there any distinction of that character in respect to the different forms of cel'ulose?

A. No; that is definitely known.

Q. Is there any doubt about that?

A. The exact composition of cellulose is not definitely known, as we know the empirical formulae for cellulose; we don't know its exact formula, and there may be different kinds of cellulose just as there are different kinds of sugar.

Q. That is what I understand, although the line of division isn't as clear.

A. It isn't as clear as it is in the case of sugars.

136 Q. Isn't it the fact that sometimes we find practically pure cellulose in the form of long tough white fibers, as in cotton, and other times in a solid mass, as in wood, some indication that the cellulose may in its internal composition, that is, in atoms and the molecules, arrange itself so as to present different characteristics physically?

A. It certainly does present different physical characteristics, but whether that is due to a mere physical condition or a chemical difference, as far as I know, is not known.

Q. Isn't it true that while in different cases it results in a different chemical composition or a different physical arrangement of the atoms, just as the atoms of carbon arrange themselves differently in the coal or in the diamond or in graphite, isn't it true that the result is substances that are essentially different in their physical characteristics?

A. Yes; they are differently physically.

Q. Do you know of any chemical reason why the cellulose that is contained in wood pulp, for instance, shouldn't be as valuable for the process which you have described as the cellulose that is contained in the cotton fiber?

A. I know of no chemical reason why it shouldn't.

Q. And you have no practical knowledge on the subject as a manufacturer?

A. I have not.

Q. As I understand, it is perfectly clear that the cellulose as it appears in the artificial horsehair as a jelly-like and formless substance as far as 'tructure is concerned?

A. Yes.

Q. Whether in the cotton or in the wood it has assumed a characteristic and definite chemical form?

A. That is true.

137 Redirect examination by Mr. PUCKHAFER:

Q. Does the cellulose that you find in plant life corespond with the protoplasm in animal life?

A. You say in a general way; yes, it does.

Q. And the different structural forms that we find in vegetable life would indicate to you as a chemist by examination under a microscope whether it belonged to one group or another; in other words, whether it would be a cellulose found in the cotton fiber or found in the flax fiber, for example?

A. Yes; you could distinguish between a flax fiber and a cotton fiber at sight under a microscope, just as you would in the illustration of the clay or the bricks, you would recognize a certain shape in clay at sight, whether it would be an urn or whether it would be a brick; it would be simply the outward shape of the clay.

Recross-examination by Mr. NICHOLS:

Q. The physical characteristics of the fire brick and the statue made out of clay would be very different?

A. Yes.

Q. It is a similarity of working formula, that is about what it amounts to; that is, the different forms of cellulose are identified and grouped together by reason of the fact that they respond to a certain working chemical hypothesis as to the atomic composition; you are not absolutely sure as to the number and the relative arrangement of the atoms, but you have an hypothesis?

A. They all have similar characteristics, they all have *have* similar basic chemical composition and have certain chemical properties alike, and there may, but as for as I know there have been no methods discovered for distinguishing between them chemically.

Q. But apart from their chemical similarity in character
138 which you have explained, physically as far as the texture and quality is concerned there may be a wide divergence in the form in which we find cellulose in nature?

A. Undoubtedly.

Q. I mean in texture, for instance?

A. Undoubtedly; yes.

Q. And its availability for one purpose or another purpose; that is, the wood differs from the cellulose as you find it in the green or growing plant or otherwise?

A. Yes.

Q. It may have hardness or it may be soft?

A. That hardness may be due to a chemical decomposition, it may be due—wood is not nearly pure cellulose.

Q. Referring to it in general, in the same general sense in which you might refer to artificial horsehair as composed substantially of cellulose, as it is, you would refer to wood as composed chiefly of cellulose, wouldn't you?

A. No; I certainly wouldn't.

Q. You have defined cellulose as being that substance which composes the walls of the cells in the vegetable world; now isn't a piece of wood chiefly composed of the walls of the cells out which the wood——

A. A large part of it is, yes; but wood contains a great many other things; it contains juices.

Q. I am referring to a dry piece of wood; I distinguish the cellulose composed in the growing parts of a growing plant from the cellulose that you find in a piece of wood which I assumed has been deprived of its free moisture.

A. There may be a great many other things present in the wood beside cellulose; cellulose is only one of the many ingredients in a piece of wood.

Q. I don't deny that wood is necessarily composed of a multitude of mineral substances——

A. And organic.

139 Q. But what I was asking you about was whether its chief and distinguishing constituent wasn't this same cellulose?

A. Yes; I might say that.

Q. As to the percentage, I suppose it varies in different woods?

A. It certainly would.

Q. You take spruce wood that is used to make wood pulp; isn't the cellulose in the spruce wood; that is, the valuable commercial constituent in the manufacture of paper?

A. It is; it is the cellulose which is extracted from the wood, or the wood is put through certain chemical processes in order to get the cellulose as far as possible in order to make the paper; it is the cellulose which is the ingredient that the paper makers wish to get.

Q. Take this piece of paper which I hold in my hand, assuming that this is made from wood pulp, you would regard that in a very general sense a form of cellulose?

A. Yes; excluding the sizing and the filling and chemicals that have been added to it; take the paper without the glazing, it would be practically cellulose.

Q. And it is practically pure cellulose, just as you would say that the cellulose in the horsehair mixed in with mineral and other ingredients that go along with the manufacture; just as in the manufacture of paper you would call it practically pure cellulose?

A. Yes; except that ordinary paper, especially the kind of paper that you hold in your hand, has a surfacing and filling material added to it; the paper is treated after the paper itself is made.

Q. It would be a better illustration to take some form of paper which was without the sizing and use that as an example; but I am taking a piece of paper in which the cellulose has become
140 mingled through the process of manufacture with other constituents, but in which, nevertheless, the cellulose is the distinguishing and chief constituent?

A. The cellulose is undoubtedly the part of the paper which gives it its chief characteristic.

Q. It is the structural constitutent?

A. Yes.

Q. That is true of the horsehair, as I understand?

A. Yes.

Q. Then, as far as the comparison is based on the presence or absence of cellulose, the artificial horsehair is as similar to paper as it would be to the cotton?

Mr. PUCKHAFER. Objected to as calling for a conclusion.

(Answer taken subject to the objection.)

Mr. NICHOLS. I am limiting myself to the chemical comparison.

A. No; because paper contains a great many other things besides cellulose, as I have been trying to make clear, whereas cotton is cellulose with a little hygroscopic moisture and a little mineral matter, just as the artificial horsehair is cellulose with a little hygroscopic moisture.

Q. Then the comparison would be only possible if we had paper that was divested of its sizing and these other subsidiary ingredients?

A. If you had a cotton rag paper, simply the ground up cotton rags made into paper.

Q. That would have the same similarity?

A. Chemically, yes.

Q. That would be true if we had a wood pulp paper without the sizing?

A. In the wo'd pulp paper the celluloid is never as pure.

Q. That is the only difference; the comparison isn't quite as accurate?

141 Chemically that would be the only difference.

Q. I have noticed in that report you have given that there was a certain, though small, percentage of mineral constituent which was referred to, if I recollect, as residuary products in the process of manufacture?

A. Yes.

Q. Now, you have to eliminate that in making your comparison with the cellulose, as that is not found in cotton?

A. No; because the cotton also contains a certain amount of mineral matter, a small amount which exists in the fiber, which rem'ins after burning the fiber.

Q. In all these substances which we have been considering the only feature which remains essentially similar in all of them is the chief characteristic componente, wh'ch is the cellulose, although in

every one of them there is a greater or less admixture of foreign substances; isn't that true?

A. Yes.

Q. The question is one of the degree and extent of the moisture and foreign substances?

A. Yes.

By Mr. PUCKHAFER:

Q. How does the percentage of pure cellulose in the official exhibit compare with the percentage of cellulose in raw cotton or cotton waste, allowing for the presence of certain moisture and mineral matter?

A. Roughly, the same.

Q. What substance is there to your knowledge in the vegetable kingdom which is composed almost wholly of pure cellulose?

A. The cotton comes about as near to it as anything I know.

By Mr. NICHOLS:

142 Q. You don't mean to testify that there is any similarity other than a chemical similarity in any of the substances that we have discussed here; that is, you are not testifying to any physical similarity?

A. Between what?

Q. Between the different substances; between the piece of artificial horsehair, or the presence of wood pulp paper, or the raw cotton, for instance.

A. Of course, the physical relation between the horsehair and the cotton would be closer than the physical relation between the horsehair and a piece of paper; they are both fibers.

Q. You mean they use an elongated——

A. Yes; they are threads and look alike; the horsehair looks more like a cotton thread than it does a piece of paper.

Q. But suppose I took a piece of the artificial horsehair and rolled it up into a shapeless pulp and a piece of the paper and a piece of the cotton and rolled them all together, there would be no greater similarity in appearance or texture then, would there?

A. Yes; there certainly would be. You can never roll the piece of paper and the piece of artificial horsehair and the piece of cotton up so that you could make the paper look more like the horsehair than the cotton did.

Q. There is nothing in nature that looks like anything else?

A. Not exactly.

Q. And there will be a marked difference, physical difference, between each of these substances, except chemically?

A. There would be no difficulty in picking one out from the other two, but that wouldn't prevent one looking more like the other one than it does another. Of course there would be dissimilarities.

Q. I mean in physical structure as well as external appearance.

143 A. You might have two Caucasians and a Chinaman together and they would all look different, you could distinguish between the three men, but you wouldn't say that the two white men looked more like the Chinaman than they did each other.

Q. That is a good illustration because the Caucasian and the Chinaman you would both call men; they would be similar except mere surface indications, I mean surface appearance; the protoplasm that has been referred to in this testimony would be the same.

A. It would so far as we know.

Q. You take your piece of raw cotton and then you take your piece of artificial horsehair and couldn't say that the internal condition and composition of the two cases is illustrated by the Caucasian and the Chinaman?

A. There is a difference there in the physical structure underneath the surface; yes, the physical structure is different to the eye.

SIEGMUND KLEIN, called as a witness on behalf of the importer, being duly sworn, testified as follows:

By Mr. PUCKHAFER:

Q. Have you testified before in these proceeding'?

A. Yes; I have at the board.

Q. I show you a sample and ask you if in the conduct of your business you have become acquainted with such an article?

A. I have.

Q. State what it is.

A. That is a hat made out of glazed cotton yarns.

Q. How did you determine that fact?

A. By cutting into it and scraping the surface of the yarn.

144 Mr. PUCKHAFER. I offer that sample in evidence.

(Same received and marked " Exhibit 115, Jan. 31/08.")

Q. I show you another hat and ask you if you have become familiar with such articles in the course of your business?

A. Yes.

Q. What is it?

A. That is a hat made out of artificial horsehair.

Mr. PUCKHAFER. I offer that sample in evidence.

(Same received and marked " Exhibit 116, Jan. 31/08.")

Importer rests.

WILTON G. BERRY, called as a witness on behalf of the United States, being duly sworn, testified as follows:

By Mr. NICHOLS:

Q. Dr. Berry, you are a chemist, are you?

A. Chemist at the United States Laboratory.

Q. Will you very briefly state your experience as a chemist?

A. Graduated at the School of Mines, Columbia College; studied at Berlin; been chemist in the New York City health department. That is my record previous to the present.

Q. Have you examined and are you familiar with a substance known as artificial horsehair?

A. Yes.

Q. Similar to that which is represented by the chemical analysis (Ex. 114) put in evidence this afternoon?

145 A. Yes.

Q. Will you very briefly state the result of your examination as to the structure of the artificial horsehair?

A. It is practically essentially cellulose, pure cellulose, varying with a small amount of mineral matter, a trace of nitrogeneous matter, and moisture.

Q. You have referred to the principal element in the artificial horsehair as cellulose?

A. Yes.

Q. Does that represent anything definite or characteristic as to its physical form or characteristics.

A. No.

Q. Is cellulose a substance which is very generally found in nature and in diverse forms?

A. Yes.

Q. What are some of its characteristic typical forms?

A. Well, it occurs in the form of fibers, vegetable fibers, also in the cellular or amorphous form in other plant growths.

Q. You have referred to two characteristic forms, amorphous and its fibrous form?

A. Yes.

Q. Now, the word "amorphous" as you have used it means without shape or form?

A. Without any general characteristic physical shape.

Q. Has it in vegetable fibers marked and distinguishing characteristics?

A. Yes, quite.

Q. Now, in the artificial horsehair has the cellulose as it is there present any of those marked physical characteristics which it has in the fibrous form, or are these lost in the process of manufacture?

A. It is lost in the process of manufacture; it is in an

146 amorphous form which has a definite physical shape.

Q. And to use an illustration, take the simple element carbon; has that an amorphous form?

A. Yes.

Q. It has certain characteristic forms?

A. Yes.

Q. What are some of the characteristic forms?

A. Diamond.

Q. Is coal another?

A. Well, that has not exactly a definite physical form.

Q. But the diamond is one and graphite is another?

A. That is crystallized.

Q. And in its amorphous form what would be its appearance?

A. Like coal or lampblack.

Q. Now, it is the same chemical substance as lampblack as it is as a diamond?

A. If the lampblack is pure, yes.

Q. There is no difference whatever chemically?

A. No.

Q. The physical form, however, is entirely different?

A. Yes.

Q. Is that an apt illustration in considering the different forms of cellulose?

A. Yes; as far as a vegetable substance can be compared to a mineral subst'nce.

Q. But the divergence between the form of cellulose in its morphous form and in the forms in which it has distinguishing characteristics, such as the fibrous form, is radically as great as between diamond and the lampblack?

A. Yes.

Q. And in the cotton it is in one of its distinguishing characteristic physical forms?

A. Yes.

Q. And in the horsehair it is in the amorphous form?

147 A. Yes.

Q. Are you able to say from your knowledge of cotton or flax and other fibrous forms of cellulose and this artificial horsehair, whether there is any physical similarity between the two forms of cellulose?

A. None except in the long drawn out shape of the thread; that is all.

Q. Is that due in any way to the presence of cellulose or is it a mere result of mechanical shaping?

A. Mechanical formation of the thread.

Q. You could make a thread of some other substance like gelatine that would have the same elongation and appearance as the artificial horsehair?

A. Yes.

Q. And the similarity would be just as great as it would be if the horsehair were made of cellulose?

A. Physically, yes.

Q. But in neither case is there any similarity due to the physical qualities and nature of the cellulose?

A. No.

Q. Is it true that you can take some substances like sugars and starches and transform by processes into other substances having a similar chemical composition but entirely different physical characteristics? For instance, melted sugar is the same thing chemically as crystallized sugar?

A. Yes.

Q. But the two things are entirely different physically?

A. Yes.

Q. There is no physical similarity as distinguished from the chemical similarity?

A. No.

Cross-examination by Mr. PUCKHAFER:

148 Q. In taking cotton or cotton waste and subjecting to the process as is done in the Chardonnet method, with which I believe you are familiar?

A. Yes.

Q. The effect is to change the structural character only of the cotton, is that true, and convert it into cellulose?

A. Yes.

Q. As far as the material is concerned there is no change?

A. Not essentially, no.

Q. What substance with which you are familiar in the vegetable kingdom is practically pure cellulose?

A. Well, possibly some other vegetable fibers; I couldn't say.

Q. Speaking of cotton specifically, how about that?

A. That is the purest form.

Q. And your analysis of artificial horsehair, didn't you find that practically pure cellulose with a little hygroscopic water?

A. Yes.

Q. How does the percentage of pure cellulose in the artificial horsehair compare with the percentage of cellulose in raw cotton or cotton waste, allowing for a percentage of mineral matter and moisture in each instance?

A. Essentially the same.

Redirect examination by Mr. NICHOLS:

Q. You know of no chemical or other reason why some other form of cellulose couldn't be employed as the raw material in making this artificial horsehair?

Mr. PUCKHAFER. I object to the form of the question, inasmuch as "other reason" is included. If it is limited to the chemical reason, I have no objection.

149 Mr. NICHOLS. I will limit to the chemical reason.

A. I know of no chemical reason why it shouldn't.

Q. You know of no other reason, do you, so far as your knowledge goes?

A. No.

Q. You have spoken of cotton as one of the purest forms of cellulose; now, isn't flax, for instance, in the same sense a practically pure form of cellulose?

A. Not as pure as cotton; it is largely cellulose, but not as pure a form as cotton.

Q. Is the difference one of degree merely?

A. Yes.

Q. Are the foreign substances other than the cellulose about the same in both forms of fiber?

A. No, there is a little more foreign matter in the flax than there would be in the cotton.

Q. You say a little more; how large a percentage of foreign substance would there be in the flax?

A. I couldn't state that.

Q. Would it be a great percentage?

A. Not a very great, no.

Q. In both cases it would be relatively a very small percentage?

A. Yes.

Q. And practically speaking both substances would be essentially pure cellulose?

A. If the cellulose of the flax was separated from the rest of the constituents present it would be available chemically for the manufacture of this article. [Referring to artificial horsehair.]

Q. In the manufacture of paper out of wood pulp the essential ingredient is the cellulose, isn't it?

A. Yes.

Q. Are you familiar with the manufacture chemically of paper?

A. Yes, generally.

150 Q. Speaking generally, is the wood that is used regarded and utilized as a form of cellulose?

Mr. PUCKHAFER. I object to the question on the ground of materiality or relevancy.

(Answer taken subject to the objection.)

A. Crude form, yes.

Recross-examination by Mr. PUCKHAFER:

Q. Wood pulp contains a great many other substances than cellulose?

A. Before it is purified, yes.

Q. The testimony that you have given here today is entirely from a chemical standpoint, I take it; you are not a manufacturer and have no manufacturing experience?

A. No.

By Mr. NICHOLS:

Q. I am referring only to the manufacture of paper out of cellulose as a raw material. You spoke in answer to the question of the purification of the wood pulp; is that for the purpose of obtaining cellulose in a purer form than it appears in the spruce from which the wood pulp is manufactured?

A. Yes.

Q. And the purpose is to obtain as near as possible a pure form of cellulose in that process?

A. Yes.

Q. As far as you speak from a chemical knowledge, is it not possible in the same way to use flax or some other material which is sub-

stantially composed of cellulose and manufacture the artificial horsehair by process of purification to remove foreign substances?

A. No reason I know of why it shouldn't be.

Q. Chemically?

A. Chemically.

151 Q. Do you have any reason, from a chemical examination, to know that the artificial horsehair, that you have examined as a matter of fact is manufactured out of cotton rather than some other form of cellulose?

A. No; I don't know that it is.

Q. And you know of no chemical reason why it couldn't have been manufactured from some other form of cellulose?

A. No.

By Mr. PUCKHAFER:

Q. Dr. Berry, you do not undertake to testify that this merchandise is not made from cotton, do you?

A. I do not; no.

Adjourned.

ALBERT ECKSTEIN *vs.* THE UNITED STATES. } No. 4335.

NEW YORK, *February 3, 1908.*

Present: Albert H. Washburn, esq., for the importer; J. Osgood Nichols, esq., assistant U. S. attorney, for the United States.

Mr. NICHOLS. I offer in evidence certain extracts from the minutes of the hearing before the collector of customs at the port of

152 New York, on the subject of the classification of imitation silk yarn, held on March 12, 1906. This hearing was held by the collector to enable the manufacturers of braids from imitation silk to present their views with reference to the classification of imitation silk thread or yarn, in view of the decision of the Circuit Court of Appeals in Hardt von Bernuth vs. the United States. The examination was conducted by Mr. Leo Oppenheimer, representing the Braid Manufacturers' Association.

Mr. WASHBURN. This offer is formally objected to on the ground that the hearing referred to was ex parte, in which counsel for the importers did not participate either in the examination or cross-examination of any of witnesses called; on the further ground that the hearing related solely to the classification of imitation silk yarn, and not imitation horsehair yarn which is the subject of the proceedings in case at bar; and in general on the further ground that the offer of the district attorney is immaterial, incompetent, and irrelevant.

The extracts from the minutes of said hearing, as offered by counsel for the Government, are received, subject to the above objection, and are as follows:

Mr. OTIS L. HUMPHREYS, having been duly sworn, testified as follows:

By Mr. OPPENHEIMER:

* * * * * * *

After being with the Lowell Machine Shop in these various capacities for about 12 or 13 years, I took charge of the cotton
153 yarn department at the Lowell Textile School in Lowell, Mass. The Lowell Textile School is, I think, the largest technical school in the world. That is, a strictly technical school; and is, beyond question, the largest in this country. I had there the entire charge of the yarn manufacturing department, taking the cotton from the raw state, passing it through the successive machines, through the drawing frame, reeling machinery, spinning machinery, also on the finer numbers, including the operation of the lock machines and comber. My duties as chief instructor in the cotton yarn department were to instruct the pupils with regard to the construction of the various machines employed in the manufacture of cotton yarn, to instruct them with regard to setting and adjusting the various machines, also in regard to the calculations connected with the draft, twist, and productions of the various machines. I also had in that capacity to give instructions with regard to the different varieties of cotton, commercially considered. I had to show the students through the leading characteristics of the various varieties of cottons, their adaptability to certain purposes. In short, my business there required familiarity and knowledge of the cotton fiber and its use in a textile manner.

While at the Lowell Textile School in that capacity I was often employed as an expert by outside parties. I have been employed by the United States Government to pass upon cottons grown at the agricultural experimental stations in this country, to give expert opinion with regard to their qualities as compared with imported cotton, particularly Egyptian. The Government has in past and may perhaps in the present be experimenting with home grown Egyptian cotton. While at the school there I received 100-pound samples, 10 or 12 varieties, which had to be considered and a
154 report made giving my opinion of their commercial qualities, their adaptability for certain yarns. It had to be carried still further; the cotton was by me carded and drawn, put through the various processes, made into cotton yarn, and report was also made to the Government with regard to the waste in the process.

Following my engagement with the Lowell Textile School I was employed by the Arlington Mills to make certain researches on the other side with regard to the same features, and when I finished with that undertaking I was employed by Harding, Whitman & Co., of

Boston, who are selling agents of the Whitman Mills and several Southern cotton mills.

* * * * * * *

Q. Will you kindly state what is yarn in your opinion and what yarn consists of—a single-thread yarn?

A. A single yarn consists of an attenuated mass of fibers, the mass having a certain amount of twist. I don't know that that is a thoroughly good definition, but it is one.

Q. Why, in your opinion, can not a filament be called a yarn?

A. Why, a filament is one of those bodies which compose a yarn. A filament cannot be divided into filaments. A yarn can always be divided into filaments.

Q. And this thread that you have is composed of a large number of fibers or filaments twisted into yarn?

A. Yes.

Q. Now, what is understood by a 2-ply yarn?

A. A 2-ply yarn is two strands of single yarn twisted together.

Q. And have each of those individual yarns that are twisted together themselves an individual twist of their own?

A. Yes.

155 Q. Can you call this thread that you have examined here and which you have given as your best opinion as consisting of 10 to 12 filaments; can you call that 10 or 12-ply yarn?

A. By no means. Because these 8 or 10 or 12 filaments are simply filaments and not yarn. They compose only a single filament; one single filament cannot constitute yarn any more than one man could constitute a regiment.

* * * * * * *

Q. Are there are any other distinguishing features, beside the fact that yarn has a twist and a filament, to distinguish between a filament or fiber and a yarn?

A. Yes. Yarn is composed of a number of filaments or fibers. A filament, as I take it, is one individual, one of those individuals of which yarn is composed.

* * * * * * *

Q. In order to have a 2-ply yarn it is necessary to have two individual yarns twisted together, each one of these individual yarns in turn being composed of fibers or filaments twisted together?

A. Yes.

* * * * * * *

Q. Mr. Humphreys, is it possible for a single filament or fiber to have a twist of its own?

A. I can't conceive how a single fiber or filament could be twisted. In fact, you take the cotton fiber, for instance. The commonly accepted definition of the cotton is collapsed twist or corkscrew twist. This composition of the fiber is the one point which makes the cotton fiber suitable for spinning—it naturally convolves.

* * * * * * *

I cannot conceive of any yarn that is not composed of more than one fiber or more than one filament twisted together like a cork-screw twist, collapsed twist. Nor can I conceive how artificial silk fiber ever could be considered a yarn itself, only when it is a mass of fibers.

156 Prof. EDWARD W. FRANCE, being duly sworn, testified as follows:

By Mr. OPPENHEIMER:

Q. Professor France, what is your occupation?

A. Director of the Philadelphia Textile School.

Q. How long have you been director of the Philadelphia Textile School?

A. 22 years.

Q. What is the nature of the work done at the Philadelphia Textile School?

A. Training prospective manufacturers from the raw fiber to the finished state of cloth.

Q. Both cotton and worsted?

A. And wool. We handle silk as well.

Q. Prior to the time you became connected with the Philadelphia Textile School did you have any experience in the manufacture of cotton yarn, or the machine for making cotton yarn?

A. Yes. My whole life, practically, has been devoted to the manufacture and different pursuits of it. In my early days I was brought up in a cotton mill in New England, followed all the different operations from the raw stock to the finished yarn, have made yarn for sale to meet the various requirements of the market.

Q. How many years, all told, have you been engaged in the manufacture of cotton yarn, or in teaching at the Philadelphia Textile School?

A. About 35 years.

Q. Have you ever given any expert testimony in behalf of the Government?

A. Yes; do it constantly.

Q. Engaged in it at present?

A. I am now revising all specifications for the army.

Q. Is the testimony that you are giving at the present time in regard to textile goods?

A. Absolutely.

157 Q. Will you kindly state what the nature of that testimony is?

A. For instance, questions in regard to ducking and canvas, what is lacking, the quality of the materials that come under the head of cotton are continually being referred to me, the question of strength by threads, what they consist of, what causes weakness, whether the fiber is all that is specified as to requirements, the weight, size, and all other little details.

Q. In how many cases have you been an expert witness on behalf of the Government in the last year?

A. Oh, about a dozen or two—couple dozen.

* * * * * * *

A yarn, in my idea of a yarn, should be a continuous thread no matter how long it may be, and the thread should be composed and is composed of many fibers, in a cross section, or filaments in a cross section. In this particular material that we have before us here (artificial silk yarn), the individual filament could not be made a continuous thread simply from the fact that there is no method of piecing it together, and any thread that goes to make up a ply must be an individual commercial thread in itself and stand by itself and can be united when the two ends are broken.

Q. In order to have a ply yarn is it necessary to have each yarn that goes to make up the ply to have a twist of its own?

A. Yes, sir.

* * * * * * *

Well, I don't think so. I can't say. I can't conceive that it can have. Of course it requires microscopic examination.

Q. There is no question in your mind that in order to have a yarn it must be composed of more than one filament?

A. Yes, sir.

* * * * * * *

158 A. In the making of cotton thread of any kind the customary way is to receive the material in the bale—500 pound—and there is a tangled-up mass of fiber lying in all directions; contains all sorts of debris, dirt, and so forth, which has to go through three or four operations before it is considered to be loose enough to be carded. Carding is disentangling the mass without any degree of paralleling the fiber, simply loosening it up and transforming these cotton fibers into what may be technically known as slubber. Slubber coming from the card may have a definite weight of material or fibers. Then we take 6, 8, or 10 of these so-called slubbers of cotton, bring them together collectively, extenuate them down to what we call a draft. Then we duplicate that operation 2, 3, or more times, according to how we want to get that article in size as a slubber, It doesn't become anything but slubber in a technical sense until it goes through what we know as first slubbing or roving frame. Therein it gets a slight twist. The fibers are at that time doubles, and continuing to double and draw, we attain a certain amount of parallelization. When it gets the first twist on the roving frame, the slubber thus extenuated has been brought down to a definite size. The finishing production of that machine becomes the raw product of the next, but is doubled in the future processes. Going through four other operations or processes, you finally come, still roving, to the spinning frame, where we double it again, putting in the necessary extra amount of twist until we get it into yarn. In other words,

cotton yarn manufacture is a doubling, drawing, or extenuating and paralleling fibers until you get them in one draft, or as near as you can, and that is considered the way that cotton yarn is made as a single thread. If the twist be running to the right as a single yarn we would put it into the left in a double yarn, just as a cable cord might be made, balancing our first twist and making our
159 calculation in the first twist to counteract the extra amount of the second twist.

Q. Until the cotton has gone through all these processes and before it receives its twist it isn't yarn, is it?

A. No, sir.

Mr. ISIDORE KATZENBERGER, being duly sworn, testified as follows:

By Mr. OPPENHEIMER:

Q. Will you kindly state, generally, what your experience has been with cotton in its raw state, cotton in its state as far as cotton yarns are concerned?

A. I handled cotton in the raw state for about 15 years, and in the past four years I have been engaged in manufacturing natural yarn and manufacturing merchandise out of it.

Q. That is, you have been engaged in the domestic manufacture of cotton yarns for the purpose of making knit goods?

A. Yes.

Q. Together you have been engaged with raw material and the manufacturing how many years?

A. About 19 years.

Q. And during that time you have constantly used what is known as cotton yarn?

A. Yes.

Q. And in your opinion do you believe you are fully capable of distinguishing what is and what is not cotton yarn?

A. Yes, sir.

* * * * * * *

Q. And what in your opinion is the distinction between a filament and a yarn?

A. Commercially a yarn is known as a number of fibers or
160 filaments twisted together, and unless they are twisted together are not considered yarn.

Q. In your opinion would you consider an individual filament yarn?

A. I would not.

Q. Whether it did have a coating or did not have a coating?

A. No.

* * * * * * *

(With the incorporating of the above extracts into the record Government rests. Testimony closed.)

161 IMPORTER'S EXHIBIT 114.

Jan. 31, 1908. Ernst J. Lederle, Ph. D.; Frederic D. Bell; Joseph A. Deghuee, Ph. D. Lederle Laboratories, Sanitary, Chemical, and Bacteriological Investigations, 39–41 West 38th street, New York City.

JANUARY 24TH., 1908.

ALBERT H. WASHBURN, Esq.,
10–12 Broadway, City.

DEAR SIR: I have examined eight samples of "artificial horsehair" submitted to me by your office marked "Chardonnet," and more particularly identified as Exhibits 1 to 4, 146247, February 24, 1906; Exhibit 1, 146247, Feb. 21, 1905; Exhibit 2, 138312, February 21, 1905; and Exhibits 2 and 3, 138312, February 23rd, 1906; also two samples marked "Fremery," and more particularly identified as Exhibits 5 and 6, 146247, February 24th, 1906. Pursuant to your request, I submit in detail the results of the laboratory tests of two samples, Exhibit 3, 146247, February 24, 1906, and Exhibit 5, 146247, February 24, 1906:

Ex. 3, 146247, Feb. 24th, 1906.

Lab. No. 23494:	
Moisture	9.79%
Ash	1.19%
Total organic matter	89.02%
Total nitrogen	0.08%

Ex. 5, 146247, Feb. 24th, 1906.

Lab. No. 23496:	
Moisture	8.99%
162 Ash	0.28%
Total organic matter	90.73%
Total nitrogen	0.01%

In the above analysis the "moisture" represents hydroscopic water found in all ordinary air dry material; the "ash" represents mineral ingredients or salts carried into the fibre in the process of manufacture, and the "organic matter" is in all cases almost entirely cellulose. The other samples above referred to, marked "Chardonnet," show no material variation in the percentages of moisture, ash, organic matter, and nitrogen from the results disclosed by the test of Exhibit 3, 146247, February 24th, 1906, here set forth in detail, while the details of analysis of Exhibit 6, 146247, February 24th, 1906, closely corresponds to that of Exhibit 5, 146247, as above set forth.

The trace of nitrogen, which is uniformly more marked in the samples marked "Chardonnet," is undoubtedly due to the process of manufacture with which as a chemist I am familiar. In the Chardonnet process the cotton waste is converted into nitrocellulose by the action of nitric and sulphuric acids. This nitrocellulose is in turn dissolved in some suitable solvent, such as a mixture of alcohol and ether, making a viscous solution, which is compressed through various small tubes or jets, which form, upon striking the air, fila-

ments, which are subsequently grouped in the case of the soft finish or artificial silk goods. In the case of artificial horsehair the stream of cellulose is forced through a larger aperture and becomes upon hardening by exposure to the air a single thread or yarn. If the article were left in this condition, it would be highly inflammable. To remedy this, the fibre undergoes an important chemical treatment of denitration, by which the substitution groups above spoken of are removed and the cellulose from which it was originally
163 formed is restored, thus becoming normal cellulose. In other words, the denitrating treatment reconverts it into the same chemical substances which it was originally, i. e., cellulose. In practice, however, the process of denitration is never quite so complete or thorough that insignificant traces of the nitrocellulose may not still be detected in the finished material, and this is one of the tests which enables us to distinguish between goods which are manufactured by the Chardonnet process and those which are manufactured by the Fremery.

In the Fremery process the cotton waste is dissolved in a solution of cup-ammonium, a salt of copper and ammonia, and this solution is forced through fine apertures, as in the Chardonnet process, discharging into a bath of acetic acid, forming threads of cellulose. The principal chemicals used are copper salts, ammonia, acetic acid, etc. At no stage is the cellulose nitrated as in the Chardonnet process, and it may be referred to as non-nitrated cellulose in contradistinction to the cellulose of the Chardonnet process, which is denitrated cellulose. In both cases, however, the resulting material is practically pure cellulose.

Respectfuly submitted.

J. A. DEGHUEE.

(Endorsed:) U. S. Circuit Court, Southern District New York. Filed Feb. 4, 1908. John A. Shields, clerk.

164 United States Circuit Court, Southern District of New York.

ALBERT ECKSTEIN
vs.
UNITED STATES OF AMERICA.

Comstock & Washburn for petitioner; J. Osgood Nichols, asst. U. S. atty., opposed.

HOUGH, *D. J.:*

Artificial horsehair is a substance composed of nearly pure cellulose, and made into a continuous thread-like form, resembling, both to sight and touch, the hair of a horse's tail or mane. This result is effected by forcing the liquid cellulose through apertures of proper size, while treating it as and when so forced with appropriate chem-

icals. When completed it is a solid, incapable of separation into any component filaments.

The board of appraisers has assessed duty on this article under sec. 6 of the tariff act of 1897 as a manufactured article not otherwise provided for. The importers claim that it is dutiable under par. 302 as a cotton yarn by similitude, relying upon Hardt vs. United States, 146 Fed., 61, as conclusive authority in their favor.

That case finds first that the article there considered is a "yarn;" that is assumed, and the only question discussed is whether it more resembles a silk yarn or a cotton yarn.

Inasmuch as the material composing it was cellulose, which is
almost the sole constituent of cotton, and is not found in silk,
165 the artificial yarn then in question was held dutiable under par.
302 as more nearly resembling cotton than silk, the material of which the importation was composed being held to turn the scale.

The material composing artificial horsehair is also cellulose, but the horsehair is not a yarn, because it has no twist, and is not composed of twisted or spun filaments. This, I think, is established by the trade testimony, and the evidence of the commercial witnesses accords with the accepted definition of yarn.

Since this importation is not a yarn, it cannot be assessed by similitude with cotton yarn or yarn of any other kind.

Decision affirmed.

March 2, 1908.

C. M. HOUGH, *D. J.*

Filed Mar. 2, 1908.

166 At a stated term of the Circuit Court of the United States of America for the Southern District of New York, held at the United States Circuit Court Rooms, in the Post Office Building, in the city of New York, on the 14th day of March, in the year of our Lord one thousand nine hundred and eight.

Present, the Hon. Charles M. Hough, judge.

ALBERT ECKSTEIN *vs.* THE UNITED STATES. } "A" Suit No. 4335.

The above cause coming on for hearing and determination before this court on the application of Albert Eckstein, importer, for a review of the questions of law and fact involved in the decisions of the Board of U. S. General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon,

Now, after hearing J. Osgood Nichols, assistant U. S. attorney, on behalf of the collector for affirmance, and Albert H. Washburn, esq.,

of counsel for the said importer, for reversal, on motion of Henry L. Stimson, U. S. attorney,

It is ordered, adjudged, and decreed that there was no error in said proceedings before said Board of General Appraisers, and that
167 their decisions herein be, and the same are hereby, in all things affirmed.

C. M. HOUGH, *U. S. Judge.*

Assented to as to form.

COMSTOCK & WASHBURN,
Attorneys for Importer.

(Endorsed:) U. S. Circuit Court, Southern District of New York. Albert Eckstein vs. The United States. Judgment of affirmance. Henry L. Stimson, U. S. attorney. Due service of a copy of the within judgment is hereby admitted. To Comstock & Washburn, 12 Broadway, N. Y. City. U. S. Circuit Court, Southern District of N. Y. Filed May 14, 1908. John A. Shields, clerk.

United States Circuit Court of Appeals for the Second Circuit.

ALBERT ECKSTEIN, APPELLANT,
vs.
THE UNITED STATES OF AMERICA, APPELLEE. } Suit No. 4335.

The above-named appellant, by his attorneys, hereby applies for the allowance of an appeal to the United States Circuit Court of Appeals for the Second Circuit from the decision and judg-
168 ment of the United States Circuit Court rendered herein on the 2d day of March, 1908, and from the order or judgment thereon entered on the 14th day of March, 1908.

Dated New York, April 13, 1908.

COMSTOCK & WASHBURN,
Attorneys for Appellant.

The foregoing application is granted, and the appeal is allowed. Dated New York, April 13, 1908.

E. H. LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

(Endorsed:) A 4335. United States Circuit Court of Appeals for the Second Circuit. Albert Eckstein, appellant, vs. The United States of America, appellee. Application for and allowance of appeal. Comstock & Washburn, attorneys for appellant, 12 Broadway, N. Y. City. A copy of the within paper has been this day received at this office. Apr. 16, 1908, Henry L. Stimson, U. S. attorney. U. S. Circuit Court, Southern District N. Y. Filed Apr. 16, 1908. John A. Shields, clerk.

169 United States Circuit Court of Appeals for the Second Circuit.

ALBERT ECKSTEIN, APPELLANT,
vs.
THE UNITED STATES OF AMERICA, APPELLEE. } Suit No. A 4335.

Assignment of errors.

The above-named appellant hereby assigns error to the decision and judgment of the Circuit Court of the United States for the Southern District of New York herein, in the following particulars:

First. In that the said court ordered, adjudged, and decreed that the decision of the Board of United States General Appraisers herein should be affirmed.

Second. In that the said court ordered, adjudged, and decreed that the merchandise in question was dutiable at 20 per cent ad valorem under section 6 of the tariff act of July 24, 1897 (30 Stats. at L., 151).

Third. In that the said court did not reverse the decision of the Board of United States General Appraisers herein.

Fourth. In that the said court did not find that with respect
170 to material, quality, or the use to which it may be applied, the said merchandise more closely resembled cotton thread or carded yarn, warps, or warp yarn, in singles, colored, bleached, or dyed, and not exceeding number twenty, than any other article enumerated in said act as chargeable with duty.

Fifth. In that the said court did not hold said merchandise to be properly dutiable at 6 cents per pound under paragraph 302 of the tariff act of July 24, 1897, by virtue of the provisions of section 7 of said act, as cotton thread or carded yarn, warps or warp yarn, in singles, colored, bleached, or dyed, and not exceeding number twenty.

Sixth. In that the said court did not hold the said merchandise to be properly dutiable by similitude in material, quality, or use to cotton thread or yarn, under paragraph 302, at the appropriate rate according to number and condition.

Seventh. In that the said court found that the merchandise in question was not a yarn.

Eighth. In that the said court did not find that the merchandise in question was a kind of yarn, to wit, artificial horsehair yarn.

Ninth. In that the said court did not find that if the merchandise in question was not a yarn, it was nevertheless a yarn by similitude.

Tenth. In that the said court made the following finding, to wit: "Since this importation is not a yarn, it cannot be assessed by similitude with cotton yarn or yarn of any other kind."

Dated New York, April 13, 1908.

COMSTOCK & WASHBURN,
Attorneys for Appellant, 12 Broadway, N. Y. City.

(Endorsed:) No. 2 4335. United States Circuit Court of
171 Appeals for the Second Circuit. Albert Eckstein, appellant, vs. The United States of America, appellee. Assignment of

errors. Comstock & Washburn, attorneys for appellant, 56 Pine street, New York City. U. S. Circuit Court, Southern District of N. Y. Filed Apr. 13, 1908. John A. Shields, clerk.

Know all men by these presents, that I, Philip Comstock, am held and firmly bound unto the United States of America, in the sum of one hundred dollars, to be paid to the United States of America; for the payment of which well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally by these presents.

Sealed with my seal and dated the 13th day of April, in the year of our Lord one thousand nine hundred and eight.

Whereas Albert Eckstein has applied to the United States Circuit Court of Appeals for the Second Circuit, for a review of the decision of the United States Circuit Court for the Southern District of New York as to the questions of law and fact involved in certain decisions of the Board of United States General Appraisers.

Now, therefore, the condition of this obligation is such that if the above-named Albert Eckstein shall prosecute said proceedings with effect and pay all damages and costs which shall be awarded against him therein, if he shall fail to make said proceeding good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

PHILIP COMSTOCK. [SEAL.]

Sealed and delivered and taken and acknowledged, this 13th day of April, 1908, before me,

HENRY J. RODE,
Notary Public, Kings County.

Certificate filed in N. Y. County.

172 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Philip Comstock, being duly sworn, deposes and says that he does business in the Southern District of New York, in the city of New York, and that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

PHILIP COMSTOCK.

Sworn to this 13th day of April, 1908, before me.

HENRY J. RODE,
Notary Public, Kings County.

Certificate filed in N. Y. County.

This bond approved as to form and amount and sufficiency of surety.

Dated New York, April 13, 1908.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) United States Circuit Court, Southern District of New York. Albert Eckstein, appellant, vs. The United States, ap-

pellee. Bond for costs on application for review. Comstock & Washburn, attorneys for appellant, 56 Pine street, New York City. U. S. Circuit Court, Southern District of N. Y. Filed Apr. 16, 1908. John A. Shields, clerk.

173 UNITED STATES OF AMERICA, *ss.*

To the United States of America:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Second Circuit at the city of New York on the 11th day of May, 1908, pursuant to an appeal on the part of Albert Eckstein, filed in the clerk's office of the Circuit Court of the United States for the Southern District of New York, in a certain suit or proceeding entitled Albert Eckstein, appellant, vs. The United States of America, appellee, suit No. A 4335, to show cause, if any there be, why the decision of the U. S. Circuit Court, in the said appeal mentioned, should not be reversed, modified, or corrected, and speedy justice should not be done in that behalf.

Given under my hand at the city of New York, in the Southern District of New York, on the 13th day of April, 1908.

E. H. LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

COMSTOCK & WASHBURN,
Attorneys for Appellants.

(Endorsed:) No. A 4335, United States Circuit Court of Appeals for the Second Circuit. Albert Eckstein, appellant, vs. The United States of America, appellee. Citation. Comstock & Washburn, attorneys for appellant, 12 Broadway, New York City. A copy of the within paper has been this day received at this office, Apr. 16, 1908. Henry L. Stimson, U. S. attorney. U. S. Circuit Court, Southern District of N. Y. Filed Apr. 16, 1908. John A. Shields, clerk.

174 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to 175, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause entitled Albert Eckstein, appellant, against the United States of America, appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District

of New York, in the Second Circuit, this 11th day of June, in the year of our Lord one thousand nine hundred and eight, and of the independence of the said United States the one hundred and thirty-second.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

175 United States Circuit Court of Appeals for the Second Circuit.

No. 106, October term, 1908.

Argued December 11, 1908. Decided January 12, 1909.

ALBERT ECKSTEIN, APPELLANT, *vs.* THE UNITED STATES, APPELLEE. } 4335. Appeal from the Circuit Court of the United States for the Southern District of New York.

Before Lacombe, Coxe, and Ward, circuit judges.

WARD, Circuit Judge.

The merchandise in question is artificial horsehair. It is made out of cotton waste, just as artificial silk is, and the process of manufacture is the same, viz, the cotton waste is chemically dissolved and the solution forced through fine apertures, solidifying into filaments when they reach the air, which are then grouped or twisted together into artificial silk. In making horsehair the solution is forced into water first, where the filaments are grouped together into one single thread before they solidify.

It is conceded that artificial horsehair is not enumerated in the tariff act, not being silk yarn under par. 385, nor cotton yarn, under par. 302. The Government has classified it under the basket clause, sec. 6, as a manufactured article not enumerated or provided
176 for in the act, whereas the importer contends it should be classified under sec. 7 as a nonenumerated article similar to cotton yarn. We have held in Hardt von Bermuth & Co. v. United States (146 F. R., 61) that artificial silk should be so classified. The judge of the circuit court affirmed the Government's classification, distinguishing that case on the ground that artificial silk was found to be yarn, whereas artificial horsehair, being solid and not composed of twisted or spun filaments, is not a yarn. Admitting that this is so, still artificial horsehair is like cotton yarn in material, each being composed almost entirely of cellulose and like it in use, being largely used as glazed cotton is in making hat braids, shoe laces, binding braids, tapes, and imitation horsehair. We think these resemblances establish its similitude to cotton yarn, even if the texture of the two articles is different. It is no ground for abandoning the tests of similitude established by Congress that their application may result in artificial horsehair, colored, bleached, or dyed, &c., always paying the lowest duties under par. 302, while artificial silk and

cotton yarn pay duties increasing accordingly to the number of threads of which they are composed, Wing & Evans v. United States.

The judgment is reversed.

A. H. Washburn, for the appellant.

J. Osgood Nichols, Assistant United States Attorney, for the appellee.

177 At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court rooms in the post-office building in the city of New York, on the 22nd day of January, one thousand nine hundred and nine.

Present: Hon. E. Henry Lacombe, Hon. Alfred C. Coxe, Hon. Henry G. Ward, circuit judges.

ALBERT ECKSTEIN, APPELLANT, *vs.* UNITED STATES, APPELLEE.	4335. Appeal from the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said Circuit Court be, and it hereby is, reversed.

It is further ordered that a mandate issue to the said Circuit Court in accordance with this decree.

E. H. L. H. G. W.

178 (Endorsed:) United States Circuit Court of Appeals, Second Circuit. A. Eckstein vs. U. S. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 22, 1909. William Parkin, clerk.

179 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 176, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Albert Eckstein, appellant, against the United States, appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 11th day of May, in the year of our Lord one thousand nine hundred and nine, and of the independence of the said United States the one hundredth and thirty-third.

[SEAL.] WM. PARKIN, *Clerk.*

180 In the Supreme Court of the United States, October term, 1908.

THE UNITED STATES, PETITIONER,
vs.
ALBERT ECKSTEIN. } No. 885.

Stipulation as to return.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record therein now on file in the office of the clerk shall be taken as the return of the clerk of the Circuit Court of Appeals for the Second Circuit to the writ of certiorari issued herein.

LLOYD W. BOWERS,
Solicitor-General.
ALBERT H. WASHBURN,
Counsel for Respondent.

June 2, 1909.

(Endorsed:) U. S. vs. Eckstein. Stipulation. United States Circuit Court of Appeals, Second Circuit. Filed June 3, 1909. William Parkin, clerk.

181 *To the Supreme Court of the United States, greeting:*

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as a return to the writ of certiorari issued herein.

Dated New York, June 3, 1909.

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

182 UNITED STATES OF AMERICA, SS:

The President of the United States of America, to the honorable the judges of the United States Circuit Court of Appeals for the Second Circuit, greeting:

Being informed that there is now pending before you a suit in which Albert Eckstein is appellant and the United States is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and

183 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that

the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the first day of June, in the year of our Lord one thousand nine hundred and nine.

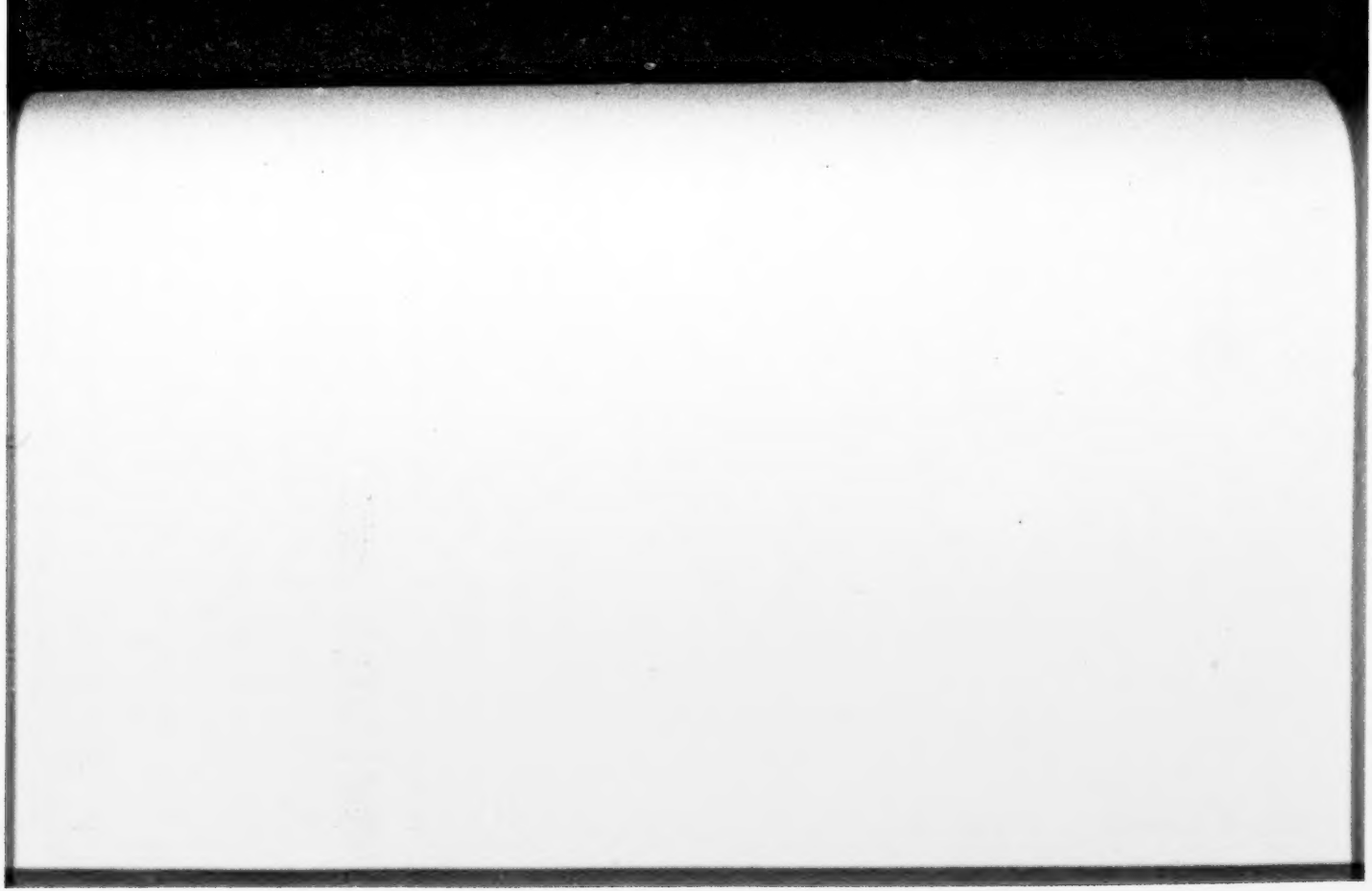
JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

184 (Indorsed:) File No. 21681. Supreme Court of the United States, No. 885, October term, 1908. The United States vs. Albert Eckstein. Writ of certiorari. United States Circuit Court of Appeals, Second Circuit. Filed June 3, 1909. William Parkin, clerk.

185 (Indorsed:) United States Circuit Court of Appeals, Second Circuit. United States v. Albert Eckstein. Return to writ of certiorari. Supreme Court U. S. Office of the clerk. Received June 5, 1909.

186 (Indorsement on cover:) File No. 21681. Supreme Court U. S., October term, 1910. Term No. 224. The United States, petitioner, vs. Albert Eckstein. Writ of certiorari and return. Filed June 5th, 1909.

O



In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES, PETITIONER,
v.
ALBERT ECKSTEIN.
} No. ——.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF THEREON.

The Solicitor-General, on behalf of the petitioner, respectfully prays for a writ of certiorari to review a decree of the United States Circuit Court of Appeals for the Second Circuit wherein it was adjudged that artificial horsehair, an article specially manufactured to imitate horsehair, is dutiable as cotton yarn by similitude under section 7 and paragraph 302 of the tariff of 1897, and not as an unenumerated manufactured article under section 6 of the said tariff.

BRIEF IN SUPPORT OF THE PETITION.

STATEMENT.

The merchandise is artificial horsehair, which is made out of cotton waste chemically dissolved and forced in its dissolved state through apertures and

water into the air, where the filaments solidify and form a single thread incapable of separation into any component filaments (R., 88, 162, 164).

Duties were assessed on the merchandise at 30 per cent ad valorem under paragraph 385 of the tariff of 1897 as silk yarn by similitude (R., 10).

(Subsequently, to wit, on May 16, 1906 (T. D., 27350), the Secretary of the Treasury instructed collectors of customs to assess duty on imitation horsehair as a nonenumerated manufactured article at the rate of 20 per cent ad valorem under section 6 of the tariff act of 1897.)

The importers protested, claiming the merchandise was dutiable as cotton yarn by similitude, or as a nonenumerated unmanufactured or manufactured article (R., 8).

The tariff provisions mentioned read as follows:

> Paragraph 302. Cotton thread and carded yarn, warps or warp yarn, in singles, whether on beams or in bundles, skeins or cops, or in any other form, except spool thread of cotton hereinafter provided for, not colored, bleached, dyed, or advanced beyond the condition of singles by grouping or twisting two or more single yarns together, three cents per pound on all numbers up to and including number fifteen, one-fifth of a cent per number per pound on all numbers exceeding number fifteen and up to and including number thirty, and one-fourth of a cent per number per pound on all numbers exceeding number

thirty; colored, bleached, dyed, combed or advanced beyond the condition of singles by grouping or twisting two or more single yarns together, whether on beams or in bundles, skeins or cops, or in any other form, except spool thread of cotton hereinafter provided for, six cents per pound on all numbers up to and including number twenty, and on all numbers exceeding number twenty and up to number eighty, one-fourth of one cent per number per pound; on number eighty and above, three-tenths of one cent per number per pound; cotton card laps, ropings, sliver or roving, forty-five per centum ad valorem.

Paragraph 385. Thrown silk not more advanced than singles, tram, organzine, sewing silk, twist, floss, and silk threads or yarns of every description, except spun silk, thirty per centum ad valorem; spun silk in skeins, cops, warps, or on beams, valued at not exceeding one dollar per pound, twenty cents per pound and fifteen per centum ad valorem; valued at over one dollar per pound and not exceeding one dollar and fifty cents per pound, thirty cents per pound and fifteen per centum ad valorem; valued at over one dollar and fifty cents per pound and not exceeding two dollars per pound, forty cents per pound and fifteen per centum ad valorem; valued at over two dollars per pound and not exceeding two dollars and fifty cents per pound, fifty cents per pound and fifteen per centum ad valorem; valued at over two dollars and fifty cents per pound, sixty cents per pound and fifteen per centum ad valorem; but in no case shall the

foregoing articles pay a less rate of duty tha
thirty-five per centum ad valorem.

Section 6. That there shall be levied, co
lected, and paid on the importation of all ra
or unmanufactured articles, not enumerate
or provided for in this act, a duty of ten pe
centum ad valorem, and on all articles manu
factured, in whole or in part, not provided fo
in this act, a duty of twenty per centum a
valorem.

Section 7. That each and every importe
article not enumerated in this act which
similar, either in material, quality, texture,
the use to which it may be applied to any art
cle enumerated in this act as chargeable wit
duty, shall pay the same rate of duty which
levied on the enumerated article which it mo
resembles in any of the particulars before me
tioned; * * *

The Board of General Appraisers held the me
chandise dutiable as an unenumerated manufacture
article dutiable at 20 per cent ad valorem under se
tion 6 (R., 20, 21). It was said (R., 21):

> The importers now come forward and
> voluminous testimony show that this so-calle
> artificial horsehair is wholly dissimilar to co
> ton yarn in construction, texture, and us
> Cotton yarn, by the testimony before us, is
> elongated strand made up of short staples ar
> it must have at least 12 twists to the inch
> be what is known as a yarn. Artificial hors
> hair has no staples and no twist whatever.
> further appears that artificial horsehair is us
> for the same purposes as genuine horsehai

> namely, in the manufacture of braids and trimmings. Inasmuch, however, as horsehair is on the free list, the similitude clause can not be applied, and it follows that the only proper classification for the article is under section 6 as an unenumerated manufactured article at 20 per cent.

Although the board sustained the alternative claim in the protest, the importer took an appeal to the Circuit Court, which affirmed the board's decision (R., 164). The court said (R., 165):

> The material composing artificial horsehair is also cellulose, but the horsehair is not a yarn, because it has no twist, and is not composed of twisted or spun filaments. This, I think, is established by the trade testimony, and the evidence of the commercial witnesses accords with the accepted definition of yarn.
>
> Since this importation is not a yarn, it can not be assessed by similitude with cotton yarn, or yarn of any other kind.

On appeal by the importer, the Circuit Court of Appeals reversed the judgment of the Circuit Court, holding that the merchandise is like cotton yarn in material and use.

The importer insists that the merchandise in suit is dutiable as cotton yarn by similitude in material and use.

The Government insists that no statutory similitude is established, and that the merchandise is therefore dutiable under section 6 of the tariff of 1897 as an unenumerated manufactured article.

Petitioner prays for a writ of certiorari in order that the judgment of the Circuit Court of Appeals may be reviewed by this court, and in support thereof assigns the following grounds:

I. This case is of great importance (1) because of the amount of revenue involved, and (2) because of the principle of classification involved.

II. Substantial similitude in material is not established.

III. Substantial similitude in use is not established.

I.

This case is of great importance (1) because of the amount of revenue involved, and (2) because of the principle of classification involved.

1. The amount of duties involved in cases pending on February 24, 1909, was approximately $277,000.

2. Classification under the similitude clause is of far-reaching importance. Two questions are presented:

(*a*) Is the similitude clause applicable to artificial horsehair as similar to cotton yarn because of a chemical constituent which is common not only to those articles but to vegetable matter generally?

(*b*) Is the similitude clause applicable to artificial horsehair as similar to a *specialized form of cotton yarn* which in its ordinary form is put to many uses entirely foreign to artificial horsehair?

Statutory similitude has been held to be a *substantial* similitude in one or more of the particulars

mentioned in section 7 of the tariff of 1897 (*Arthur* v. *Fox*, 108 U. S., 125, 128; *Stuart* v. *Maxwell*, 16 How., 150, 162; *Murphy* v. *Arnson*, 96 U. S., 131, 133; *Pickhardt* v. *Merritt*, 132 U. S., 252, 259).

II.

Substantial similitude in material is not established.

"Similar in material," as used in section 7 of the tariff of 1897, does not mean similar in the chemical elements which compose the material, but similar in the physical characteristics of the material.

Cotton yarn is made from cotton which retains its substantial form in the process of spinning. Artificial horsehair is made from cotton waste which loses the quality and texture of cotton in the process of manufacture. *The merchandise as imported no longer consists of cotton* (*Meyer* v. *Arthur*, 91 U. S., 570).

The importer contends for similitude in material because of the chemical constituent cellulose. Cellulose is found generally in nature and in diverse forms. It is the material forming the cell wall of vegetable matter in general. For example, cellulose is the valuable constituent in the manufacture of paper from wood pulp (R. 134, 136, 139–141, 145, 149, 150); yet obviously neither the pulp nor the paper would be classified as cotton yarn by similitude for that reason. Wood is used for the manufacture of bedsteads, and also of paper. If the paper and bedsteads were subjected to a chemical analysis, it would be found that they were of precisely the same

material, but if bedsteads were not otherwise provided for in the tariff, would anyone suggest that they should be taxed as paper under the similitude clause? Or would any two plants or other two forms of vegetable matter be deemed similar because of the cellulose in each?

Carbon is a property common to coal, diamonds, and graphite, but it would be absurd to hold that diamonds should be classified as coal by similitude at the rate of 67 cents per ton if they were not enumerated in the tariff.

There are constituents even more common, such as water, which manifestly could not be made the basis of similitude under section 7.

What similarity is there between cotton yarn and this imitation horsehair, as materials, when their physical characteristics are considered? No two threads can be more dissimilar. The one is composed of fiber and may be picked to pieces and restored to its natural state as cotton, while the other possesses no fiber and can not be reduced to any form resembling cotton. The one is made by spinning and is in the form of twisted and interlaced fibers, and its tensile strength is the result of the friction arising from this interlacing, while the other is a solid mass made by squeezing the cellulose through apertures of proper size, and its strength is due entirely to cohesion between its particles. There is no more substantial similarity between them than between horsehair and cotton yarn and not nearly so much as between a

woolen and a cotton thread. To hold that they are similar in material would be to hold that there can be no material of which any kind of product can be woven whether hair, reed, or bark, which, in the absence of a special duty upon it, should not be classified as cotton thread or yarn.

In *United States* v. *Proctor* (145 Fed., 126) the Circuit Court of Appeals for the First Circuit held that extract of nutgalls (a morbid growth on the oak), *though containing tannin as a component part*, is not "similar in material" to tannin, so as to be dutiable at the rate applicable to the latter article under the similitude clause in section 7 of the tariff of 1897. It was said (pp. 131, 132):

> Although the tannic acid sought as the result of such processes as the Board of Appraisers described exists in combination in the original mixture, yet that result is, for practical purposes, and, alike in popular and commercial phraseology, a new thing. For illustration, steam, or the vapor resulting from steam, is only water evaporated or sublimated; and yet neither in popular phraseology nor by the law of the courts is either regarded as water. So alumina is the characterizing ingredient of common clay, and yet in no fair sense of the English language are they the same, either actually or by similitude, although by an expensive process alumina and its metal, aluminum, are derivable from the clay. * * * Here are, in effect, clear statements that, by the mere changes to which they have referred, from nutgalls, berries, and the like, the origi-

nals have entirely lost their character as such. All this illustrates perfectly the proposition which we make, that by the change, involving various processes, from extract of nutgalls to tannic acid, the original extract of nutgalls has also, in every proper sense, entirely lost its character as such. Indeed, as between extract of nutgalls and tannic acid, in view of the explanations we have made, it violates every sensible rule of the use of the English language, and speaks only with refined ingenuity, to assert similitude on account of some similarities "in material, quality, texture, or use," as spoken of by section 7 of the act of July 24, 1897 (ch. 11, 30 Stat., 205; U. S. Comp. St. 1901, p. 1693). By necessary implication, as well as *by the force of the lines of decisions of the Supreme Court, customs legislation speaks in a natural voice* to the persons or classes to whom it is addressed, according as those persons or classes are laymen, merchants, or men of science; and the attempt here to classify the mere filtrate of nutgalls as tannic acid or tannin is only one of the too numerous instances in which either the United States or importers undertake to twist what is plainly written, contrary to this rule of construction, for the purpose of obtaining special results, in the interest of one or the other. Therefore, we are compelled to reject the claim of the United States that the importations in question on this appeal should be classed as tannin or tannic acid, by either direction or by similitude.

The importer relies on the decision in *Von Bernuth* v. *United States* (146 Fed., 61).

In that case the merchandise was admittedly *a yarn* made by spinning and twisting together a large number of fine fibers of cotton waste to imitate silk and known as nearsilk. The question was whether such yarn more closely resembled silk or cotton yarn. It was a choice between two forms of similitude covered by the same section of the tariff. The court said (p. 62):

> In texture they are similar equally to cotton yarn and to silk yarn, consisting of fibrous threads or filaments. So in the use to which they may be applied, silk yarns, cotton yarns, and these yarns are all woven into fabrics for dress goods, upholstery purposes, and whatnot. So far as quality is concerned, they certainly resemble cotton yarn as much as they do silk yarn. As to material, however, being made from cotton waste, a vegetable product, and being in their finished condition fiber-like threads of cellulose, they more nearly resemble cotton yarn than they do the threads or yarns of silk, which are spun from the cocoons of the silkworm. We are therefore of the opinion that they most resemble the yarns of paragraph 302, and, being nonenumerated, should be classified accordingly.

The question here is whether artificial horsehair, a single large continuous thread or filament which can not be untwisted like cotton yarn and artificial silk, comes within the similitude clause or within the general provision for all articles not otherwise provided for.

The vegetable origin of artificial horsehair should not determine its classification when the intent and effect are to make an article resembling a part of an animal, to wit, hair of the tail or mane of a horse.

The merchandise in the nearsilk case was *yarn* while that in the case at bar is not a yarn. A yarn is a composite structure and upon the comparative delicacy and fineness of that structure Congress has based the rate and amount of duty which it deemed appropriate to the relative elaboration and consequent value of the merchandise. Paragraph 302 imposes duties on cotton thread and yarn by "numbers." The number of a cotton yarn increases as the size of the strands of which the yarn is composed decreases. (*Downing* v. *U. S.*, 109 Fed., 885.)

There are no "strands" in horsehair or imitation horsehair, which consists of one solid filament, and there can consequently be no classification of such merchandise by numbers in accordance with paragraph 302.

A peculiar result followed the attempt to give effect to the decision in the *Von Bernuth* case. In ascertaining the duty on artificial silk as cotton yarn the former was found to be of a high grade as determined by the "numbers" of the yarn in accordance with paragraph 302 of the tariff of 1897, the numbers representing the relative fineness of the separate fibers twisted together to form the yarn, and the rate of duty was therefore much higher than would have attached to the artificial silk yarn by similitude to silk yarns, which it was intended to imitate. Thereupon

the importers sought relief from the consequences of the litigation in the *Von Bernuth* case, claiming that its application would be ruinous to them. The desired relief was granted by the Treasury Department, *and the Von Bernuth case was not applied*, the importers agreeing to acquiesce in the classification of artificial or nearsilk by similitude to *silk yarns*, as before.

The application of the *Von Bernuth* case to artificial horsehair would not involve such results, because this merchandise consists of a single solid filament or thread, and therefore would not be dutiable by "numbers." In other words, artificial horsehair would be subject to the minimum rate applicable to cotton yarn under paragraph 302 of the tariff of 1897.

Artificial horsehair differs from silk and cotton yarns in two substantial uses, which alone make the *Von Bernuth* case inapplicable.

1. Silk and cotton yarns consist of fibrous threads, which may be separated and counted. Artificial horsehair, on the other hand, consists of a single solid filament incapable of separation.

2. Silk and cotton yarns are woven into fabrics for dress goods and upholstery and other purposes for which artificial horsehair is never used.

III.

Substantial similitude in use is not established.

Imitation horsehair is not similar in use to cotton yarn. The question is not whether the braids or hats made from artificial horsehair look like braids or

hats made from cotton yarn, but *is whether the imported merchandise is similar to cotton yarn.*

The importers do not contend that this material is ever used for cotton yarn. Their contention is based wholly on the fact that cotton yarn manufactured by a peculiar process and leaving the thread in a peculiar and unnatural condition, being what is known as glazed cotton, is sometimes used as a substitute for this imitation horsehair or for genuine horsehair.

There are many illustrations which show this contention to be as absurd as the contention with reference to the similarity of material. For instance, car wheels are usually manufactured of iron; but there has in recent years been discovered a process by which they can be made of paper. Suppose iron was not otherwise provided for, would it be insisted that it should be classified as paper because paper can be used in one form for the same purpose as iron?

Other illustrations are dishes of china and dishes of wood; shoes of leather and shoes of canvas or of wood, or divers' shoes of lead; and napkins, etc., of linen and of paper.

If *glazed* cotton yarn were not dutiable under a specific provision, and this imitation horsehair were specifically mentioned as dutiable, then there might be reason for insisting that glazed yarn should be classified as imitation horsehair, because its *general* use is the same.

Glazed cotton is one form of cotton yarn, and the only one at all relied on to establish similitude. The cotton threads are covered with a gelatinous and polished substance which is intended to and does conceal the structure and quality of the thread. Importer's witness Roehrig admitted that other cotton yarns are not similar to glazed cotton, which is "polished cotton" adapted to a different use from cotton yarn (R., 104).

Glazed cotton yarn is worth $1.25 or $1.50 a pound, while artificial horsehair is worth about $2.25 per pound. (R., 110, 117.)

Similitude to cotton yarn in general must be established, that is, it must be shown that the *ordinary* use of both artificial horsehair and cotton yarn is to effect in a particular manner or process the same concrete result. That has not been done in the case at bar.

As said with reference to similarity of material, so it may be said of similarity of use. There are no two threads made more dissimilar than the two in question. The ordinary cotton yarn is *never* used for the same purpose as imitation horsehair. In order to be so used, *it must be specially prepared for that purpose.* Imitation horsehair has a use entirely distinct from that for which cotton yarn is used, and is never used for the same purpose as the ordinary cotton yarn.

Imitation horsehair is in no sense an imitation in use of cotton yarn; the *glazed* cotton yarn is an imitation of artificial or natural horsehair.

The attention of the court is especially invited to the samples of imitation horsehair and glazed cotton and the varieties of cotton yarn which have not been specially treated, all of which by agreement were withdrawn from the files of the Circuit Court for inspection and consideration with this petition.

It is difficult from mere appearance to distinguish between the artificial horsehair and *glazed* cotton, although the difference between them readily appears when the threads are inspected and especially when there is an attempt to unravel them. *But there is no similarity whatever in appearance between the artificial horsehair and the cotton yarn in general use, and therefore no possible similarity of use, which requires that the substitute shall look like horsehair.*

These samples emphasize more strongly than words possibly can the Government's contention that there is no substantial similitude between cotton yarn and artificial horsehair and that the only similitude is between the horsehair and *glazed* cotton, which is a form of cotton wholly unlike in appearance any other cotton yarn and is by a special process made to imitate horsehair.

In view of the importance of this issue, and of apparent error in the court below, I respectfully ask that the writ of certiorari be granted.

LLOYD W. BOWERS,
Solicitor-General.

MAY, 1909.

O

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1908.

THE UNITED STATES, Petitioner, vs. ALBERT ECKSTEIN, Respondent.	No.

BRIEF IN OPPOSITION TO THE PETITION.

Statement.

The issue, in a word, is whether a thread-like article —artificial horsehair yarn—not enumerated in the tariff law, produced from cotton fibres by a process of chemical spinning, is dutiable by virtue of the similitude clause (Section 7, Act of July 24, 1897, 30 U. S. Stat., 151) at the rate levied on yarns produced from cotton fibres by a process of mechanical spinning. The record shows that the merchandise in suit became a commercial article subsequent to the passage of the present act—that is about 1899 (Rec., p. 103, fol. 307). From that

period down to May, 1906, it was classified by the customs officials, as were the various shipments involved in this case, under paragraph 385 as silk *yarn* by similitude by virtue of Section 7. It is now contended, in accordance with a somewhat belated theory of the Treasury Department, that it should be assessed as a non-enumerated manufactured article under Section 6.

The decision below which the United States seeks here to review followed a decision by the same court (*Von Bernuth vs. United States*, 146 Fed. Rep., 61), wherein it was held that artificial silk yarn—which differed from artificial horse hair yarn only in that its filaments were thinner—was dutiable as cotton yarn by virtue of similitude as to material. Upon the advice of the Attorney General, the Treasury Department formally acquiesced in this decision (Treasury Decision 27,073). The peculiar history surrounding this case is set forth in the appendix to this brief.

ARGUMENT.

I.

It is well settled that the similitude clause (Section 7) must be invoked before the clause for non-enumerated articles (Section 6) can apply.

Arthur vs. Fox, 108 U. S., 125, 128, 129.
Hahn vs. United States, 100 Fed. Rep., 635.

II.

This merchandise so nearly resembles cotton yarn not only in material, but also in the use to which it may be applied, that either one of these similitude considerations legally precludes its relegation to section 6, and clearly warrants its classification by virtue of section 7 under paragraph 302 as cotton yarn in skeins, or in any other form.

The only issue herein is whether a substantial similitude exists. The question of similitude is one of fact, and this Court has so held.

Herman vs. Arthur's Executors, 127 U. S., 363, 370.

And the petitioner is seeking a review of that question of fact. We accept the gage and assert that the Court below, upon the record, was justified in holding that in the statutory particulars of material and use the merchandise in suit was substantially similar to cotton yarn.

Similitude does not mean or imply identity; and similitude in one statutory particular is sufficient.

In *Arthur vs. Fox, 108 U. S., 125*, the goods under consideration were so-called velours, composed of cow or calf hair, vegetable fibre and cotton, cow or calf hair chief value, and used, like goat's hair and cotton goods, in imitation of seal skin, for manufacturing hats and caps. The question was whether they should be classed for duty purposes under the provision for "manufactures of cotton, not otherwise provided for" or under the provision for "all *manufactures* of every description *composed* wholly or *in part of* worsted, *the hair of the* alpaca, *goat* or other like animals, *except such as are composed in part of wool, not otherwise provided for*" (material parts of statute are underscored); and the Court held that they were dutiable by similitude as manufactures in part of goat hair, although there was no goat hair whatever in their composition, the point, however, being that they were used like the goat hair goods to imitate seal skin.

In *United States vs. Roessler* (C. C. A.), 137 Fed. Rep., 770, it was said:

> "The counsel for appellant have taken pains to point out numerous instances wherein the two articles differ, but it must be borne in mind that the statute does not require identity; if that were necessary the statute would have no raison d'être. *It is enough if there be a substantial similitude in any one of the particulars mentioned*—material, quality, texture or use (Arthur v. Fox, 108 U. S., 125, 2 Sup. Ct., 371, 17 L. Ed., 675)."

See, also:

Dana vs. United States (C. C.), 91 Fed., Rep., 522; affirmed (C. C. A.) 99 Fed. Rep., 433.

Hahn vs. United States (C. C. A.), 100 Fed. Rep., 635.

Hahn vs. United States (C. C.), 121 Fed. Rep., 152.

Menzel vs. United States (C. C. A.), 142 Fed. Rep., 1038; affirming, 135 Fed. Rep., 918.

Weilbacher vs. Merritt, 37 Fed. Rep., 85.

We are not called upon to consider similarity or dissimilarity in any non-statutory respect. In fact we are not permitted to go beyond the four particulars which the statute itself mentions. It is manifest that under the law no real or fancied resemblance in looks, color, form, structure, inflammability, or any other particular than the four named in the statute, has any place whatever in the discussion.

(A) *Similarity in Material.*

The goods are made of cotton fibres. Cotton consists of pure cellulose with a small percentage of hydroscopic water (Rec., p. 148, fols. 443). The merchandise in suit is pure cellulose with a small percentage of hydroscopic water; it differs only from the cotton fibre in that the cell structure has been broken down. Other than this, cotton and the merchandise in suit are identical in material. No element is found in cotton which is not present in this merchandise, no element is in this merchandise which is not found in cotton, and the proportion of elements in both is approximately the same.

> "Q. In taking cotton or cotton waste and subjecting to the process as is done in the Chardonnet method—with which I believe you are familiar?
> "A. Yes.
> "Q. The effect is to change the structural character only of the cotton, is that true, and convert it into cellulose?
> "A. Yes
> "Q. As far as the material is concerned there is no change?
> "A. Not essentially, no."
>
> Berry, Gov. Chemist (Rec., 147, 148, fols. 441, 442).

> "Q. How does the percentage of pure cellulose in artificial horsehair compare with the percentage of cellulose in raw cotton or cotton waste, al-

lowing for a percentage of mineral matter and moisture in each instance ?

" A. Essentially the same."

(ditto, Rec., 148, fol. 443).

It is a comparison in material between cotton yarn with its respective elements in their respective proportions and artificial horsehair yarn with its respective elements in their respective proportions.

The respondents do not rest their case on a claim that because cellulose is found in both cotton and the goods in suit that therefore there is a similitude in material. They assert that the proof is uncontradicted that in all chemical elements and in their respective proportions artificial horsehair yarn is similar to cotton yarn in material.

If the cell structure were restored we would have pure cotton. We submit a closer similitude in material could not in fact exist without reaching the point of identity.

(B) *Similarity in use.*

Manifestly, a given cotton yarn cannot be used for all the purposes of all cotton yarns. Cotton yarns have four broad, general uses, to wit, knitting, weaving, sewing and braiding (Rec., 89, fol 266; Rec., 95, fol. 283). A yarn used in knitting is different from one used for sewing or braiding. The statute (Par. 302) covers cotton yarns regardless of their use, but it provides varying rates of duty depending upon number, condition and ply, so that a thick, heavy, stiff yarn, used for hat braids, by this carefully regulated paragraph, pays a lower duty than a fine, light, sewing yarn of high number. And the yarns differ in character of twist, a loose twist giving a soft yarn and a compact twist a very hard, firm yarn. The looseness or compactness of twist depends upon the ultimate use of the particular yarn. Thus, knitting yarns or darning yarns, such as Ex. N, have a small degree of twist, whereas weaving yarns, by comparison, take a great deal

of twist (Rec., pp. 46–49, fols. 138 and 297). Again, weaving yarns vary widely as to twist, for it is obvious that soft-finished goods, such as fabrics, call for a relatively loosely twisted yarn compared with the really stiff, hard twisted yarn necessarily entering into hat braids, which require a hard, firm finish. It requires no argument to show that a cotton hat braid must be made of a yarn which is both stiff and hard twisted; because a hat made of soft braid would not retain its shape. In this group of hard twisted yarns, we, therefore, find the cotton yarn used in the production of hat braids, and in the same commercial group appears the article in suit.

Rec. 96, fol. 286.
Rec. 100–101, fols. 300, 302, 303.
Rec. 116, fols. 347, etc.

That is its chief use.

Eckstein, Rec. 89, fol. 267
Straus, Rec. 96, fol. 286.
Roehrig, Rec. 101, fol. 303.
Robison, Rec. 113, fol. 339.
Schloss (Gov.) Rec. 123, fol. 368.

It has, however, in common with cotton yarns, other uses.

Rec. 96, fol. 286.
Rec. 101, fol. 303.
Rec. 106, fol. 317.

That cotton yarn is used to make hat braids was recognized in *Arthur vs. Zimmerman*, 96 U. S., 124, interpretating the tariff acts of 1861 and 1862 and in *Zimmerman vs. U. S.*, 61 Fed. Rep., 938, involving the classification of hat braids made of cotton yarns imported in 1890 and 1891.

The fact that this Court recognized the use of cotton in the making of braids for hats as far back as the Act of 1861 is proof of a large commercial use of cotton yarn for that purpose.

It is one of the four broad uses of cotton yarn and such yarn is dutiable under paragraph 302 of the pres-

ent law, whereunder the merchandise in suit is claimed dutiable by similitude.

One of the many varieties of cotton yarn used in making hat braids is known as glazed cotton yarn. Such merchandise has been uniformly classified for customs purposes as a cotton yarn, and so far from being a highly specialized and unusual commodity, it has been an important article of commerce for at least thirty years.

Downing vs. U. S. (C. C. A), 109 Fed Rep., 885; T. D. 20556; G. A., 4334, Jan. 16, 1899, and T. D. 23283; G. A. 4994.

See, also,

Rec., 103, fol. 307.
Rec., 106, fol. 316.
Rec., 114, fol. 340.
Rec., 95, 96, fols. 285–6.

An examination of Ill. Ex. 105 (Artificial Horsehair Braid), Ill. Ex. 107 (Glazed Cotton Braid) Ill. Ex. 109 (Braid composed of Artificial Horsehair and Glazed cotton mixed), Ill. Ex. 115 (Glazed Cotton Hat), and Ill. Ex. 116 (Artificial Horsehair Hat), which, among others, are submitted by stipulation for the inspection of the Court, will establish at a glance the close and substantial similarity in use, and upon this question of use solely, the language in *United States vs. Roessler, supra*, is directly in point, to wit,

> "Ferro-chrome and ferro-manganese look alike; even the experts are unable to tell them apart, and they are similar in quality and in use."

Artificial horsehair yarn has been on the market for about ten years (see testimony of witness Roehrig, given in December, 1907, Rec. 103, fol. 307), and it is undisputed that it subserves precisely the uses of such cotton yarn. This is a complete answer to the suggestion of the learned Solicitor-General (Government Brief, p. 15), that glazed cotton yarn, which has been a well-known article of commerce for thirty years, is

an imitation of the merchandise in suit. Modern ingenuity has invented a process of chemical "spinning" (so referred to by the witnesses—Rec. 80, 81, fols. 240-243; Rec. 68, fol. 204) and the effect of the petitioner's position is to impose a penalty upon such ingenuity by insisting on a greater tax than on the cotton yarn used for the same purpose and made of the same material but spun mechanically.

The learned Solicitor-General (Government Brief, p. 13), argues that inasmuch as silk and cotton yarns "consist of fibrous threads which may be separated and counted", whereas the merchandise in suit "consists of a single solid filament, incapable of separation," therefore, there is such a difference in substantial use as to make the Von Bernuth case inapplicable. Structural differences of fibre in no way affect similitude in use. In *Patterson vs. United States*, 166 Fed. Rep., 733 (C. C. A. Second Circuit), it was held that genuine horsehair braids, unenumerated in the tariff act, were dutiable by similitude in use to the structurally radically different hat braids composed of straw, chip, grass, palm leaf, osier or rattan provided for in Paragraph 409 of the present tariff. In this decision the Treasury Department has formally acquiesced (T. D. 29,590).

III.

The Merchandise is a Yarn Commercially.

Neither the Board of General Appraisers nor the Circuit Court found that substantial similitude in material or use to cotton yarn was lacking. They placed their decisions upon the ground that the merchandise was not structurally a yarn. This was error, for manifestly, if the article has the structure, is made of the

same material and used the same, the article imported would be the *precise* thing named in the statute and there never could be any application of the similitude clause. In other words similarity is required and not identity.

But the merchandise is in fact commercially a yarn. Excerpts from the record are set forth in appendix B herewith. The testimony offered by the respondent came from yarn dealers, men who dealt not in one kind of yarn, but in many kinds, and who, it is significant to note, handled artificial horsehair and cotton yarns in the regular course of business. The testimony of these witnesses was practically unanimous to the effect that the merchandise in suit was bought and sold as a yarn, was used as a yarn, responded to all the practical tests of a yarn, and would have been *regarded by the trade as a species of yarn in 1897* and prior thereto.

In developing his argument that the merchandise in suit is not a yarn, our learned adversary contends (Government brief, p. 12), that there can be no "classification of such merchandise by numbers in accordance with Paragraph 302." It suffices to say in answer that the collector between January and May, 1906, during which period the merchandise in suit was assessed as cotton yarn by similitude, following the acquiescence in the Von Bernuth case, repeatedly and easily determined, as the testimony of the customs examiner shows, the classification of artificial horsehair yarn *by number* in accordance with the provisions in paragraph 302 (Rec. 83, fol. 248). See, also,

Stipulation, Rec. 55, fol. 164.

Testimony of two experienced cotton yarn importers, Rec. 96, fols. 288 and 289; Rec. 107 and 108, fols. 321, 322.

For a sidelight upon the trade view of the merchandise in suit, see:

Tariff Hearings before the Committee on Ways and Means of the House of Representatives, 60th

Congress, First Print, No. 23, p. 3018, containing a "Brief of the Manufacturers of Artificial Silk and Artificial Horsehair Yarns of the United States."

It is also interesting to note an apparently contemplated legislative recognition of this trade understanding in paragraph 401 of H. R. 1438, reported April 12, 1909, to the Senate of the United States, wherein reference is made to *yarns of artificial silk or imitation horsehair.*

IV.

Amount of Revenue Involved.

Careful inquiries and investigations in the trade convince counsel that the amount of duties involved in this case, as suggested by the government, is excessive, and is, perhaps, explained by the probable fact that the estimate is based upon an assessment of 30 percentum ad valorem throughout, whereas during the last three years the merchandise has been assessed under Section 6 at 20 percentum ad valorem. If the amounts due the various importers of artificial horsehair yarns throughout the United States who have paid duties under protest since 1899 are lumped together, the total will no doubt be substantial, but this circumstance should not operate to deprive the respondent of monies which he asserts to have been illegally exacted from him by duress. It is suggested that the size of a sum illegally exacted, of which the Government has for a number of years had the use, and upon which, in the event of refund, it pays no interest whatever, adds no force to an argument for continued retention.

It is respectfully submitted that, as the merchandise in suit is carried by yarn dealers, is used as a yarn, especially for the making of braids, one of the demonstrated substantial uses of cotton yarn, and has been found as a fact by the Court below to be similar to cotton yarn in material and in use, the petition should be denied.

ALBERT H. WASHBURN,
Of Counsel for Respondent.

APPENDIX.

A.

The Von Bernuth case was decided on January 16, 1906. The formal Government acquiescence was dated January 1st, 1906. When the protests on the suspended files of the Board of General Appraisers came to be taken up, a controversy developed as to the structure and character of the long individual filaments composing the artificial silk yarn. The Government took the ground that each of these filaments (which can be seen by a reverse twist of sample marked Ex. 1, 147,-631, referred to in the stipulation covering samples submitted for inspection) was, for duty purposes, to be regarded as a cotton yarn single. This would make said Ex. 1 dutiable not as a single yarn but as a 12 or 14 ply yarn. The importer's position, on the other hand, was that said Ex. 1 must be regarded as a single and not a ply yarn because :

(1) The longer individual filaments composing artificial silk are more closely assimilated to the shorter individual fibres composing cotton—both being by a twist united into a single yarn, and both being capable by a reverse twist of being resolved again into individual filaments, fibres or strands.

(2) Before a yarn could be regarded as a yarn commercially, it must possess sufficient tensile strength to be used commercially for the purposes of a yarn, *i. e.*, knitting, weaving, sewing or braiding. This tensile strength was usually imparted by the twisting or interlocking of the filaments or fibres. It was insisted that the individual filaments did not have the tensile strength a yarn must possess.

Upon the issue thus joined the testimony before the board (R., pp. 26–76) was taken as clearly appears from the colloquy of counsel (R., 26–28, fols. 78–85). Indeed

only excerpts of the board testimony appear in the printed record, inasmuch as the great bulk of it had no bearing on the issue here presented.

At the time of the board hearing there was no dispute whatever between the Government and importers as to the status of the merchandise in suit (R., fols. 80 and 164). Then, and for several months following the acquiescence of January 31st, it was passed as a single cotton yarn by similitude (R., fols. 270, 290 and 308).

The number of artificial silk yarn was never determined judicially in any way. The new method of classifying it as of never less than 12-ply and frequently in multiples of 12-ply making it from 40 to 80-ply was prohibitive. There was a widespread fear among the importing community, not without foundation, that the Government might decide to go back and reliquidate at the new rate entries covered by protests ranging over a number of years. This would have meant a demand for additional duties so stupendous in amount as to bankrupt firms called upon to pay them. The result was an abandonment of all protests relating to artificial silk and a return by the Government to the rate in force prior to the decision by this Court in the Von Bernuth case. Artificial silk is to-day being classified as silk yarn by similitude at 30 per cent. ad valorem, Paragraph 385. By T. D. 27350 of May 16, 1906, the Department instructed collectors to classify artificial horsehair under Section 6. The subsequent board decision in the case at bar (June 22, 1906) is in harmony with this view.

B.

STRAUS:

> "Q. Tested by your definition are the official exhibits in this case (said official exhibits here shown to witness) yarns?
>
> "A. Yes, sir.

"Q. In order for yarns to be fitted for the various uses which you have enumerated, what quality or qualities must they possess?

"Tensile strength, principally" (Rec. 95, fol. 284).

* * * * * *

"Q. Measured by the amended definition which you gave us quite a short time ago, would these artificial horsehair yarns be regarded as yarns by the trade and have been so regarded by the trade in July, 1897, and prior thereto?

"A. Yes, sir" (Rec. 100, fol. 299).

* * * * * *

"Q. Is artificial horsehair yarn like these official exhibits carried generally by the yarn people?

"A. By those yarn dealers you sell braid and millinery supply yarns" (Rec. 100, fol. 300).

ROEHRIG:

Q. What kind of yarns do you carry?

A. Polish cotton or glazed cotton, and silk, artificial horsehair.

Q. What else?

A. Mercerized cotton."

(Rec. 101, fol. 302.)

LITTAUER:

Q. How many years have you been engaged in the yarn business?

A. 28 years.

Q. Tell us what kind of yarns you carry?

A. Silk, cotton, worsted, artificial silk, artificial horsehair, polished threads, glazed cotton yarns, tinsel yarns."

(Rec. 106, fol. 316.)

* * * * * *

Q. Measured by your amended definition, would artificial horsehair like the official exhibits here in suit (now shown the witness) have been regarded as yarns by the trade in July, 1897?

A. Yes.

(Rec. 107, fol. 319.)

KELLER:

Q. Isn't artificial horsehair bought and sold as artificial horsehair?

A. And yarns. They are both synonymous.

(Rec. 111, fol. 332.)

* * * * * *

ROBISON:

Q. What kind of yarns do you carry?

A. We carry cotton yarns, polished or glazed yarns, artificial silk yarns and artiffcial horsehair yarns, tinsel yarns. That is about the scope.

(Rec. 113, fol. 338.)

* * * * * *

Q. You are familiar with the yarn trade, are you?

A. I am.

Q. Is artificial horsehair carried by yarn people?

A. Yes.

(Rec. 115, fol. 344.)

MANLEY (Gov.):

"Q. If science has devised a process by which a yarn can be spun without twisting together cotton fibres, would you consider that as a yarn, even if the fibres were not twisted?

"A. Certainly; yes."

* * * * * *

"Q. If science should devise a yarn without a twisting process, you would concede I suppose, Mr. Manley, that it would have to be an article capable of some practical use, would you not?

"A. Yes."

(Rec. 72, fols. 214 and 216.)

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES, PETITIONER,
v.
ALBERT ECKSTEIN. } No. ——.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

STIPULATION AS TO EXHIBITS.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the following exhibits used at the hearing of the case in the court below may be submitted with the petition for a writ of certiorari for the inspection of the court:

Samples marked "Ex. 1, 146247;" "Ex. 2, Protest 138312;" "X 3" and "X 5," are representative official exhibits of the merchandise in suit.

Samples marked "Illus. Ex. 110, Dec. 18–07;" "Illus. Ex. 111, Dec. 18–07, suit 4335;" and "Illus. Ex. 113, Dec. 18–07, suit 4335," are representative exhibits of glazed cotton yarn.

Sample marked "Illus. Ex. 105, Dec. 16–07," is an exhibit of artificial horsehair braid.

Sample marked "Illus. Ex. 107, Dec. 16–07, suit 4335," is an exhibit of glazed cotton braid.

84801—09

Sample marked "Illus. Ex. 109" is an exhibit of braid composed of artificial horsehair and glazed cotton mixed.

Sample marked "Importer's Ex. 115, Jan. 31–08, Eckstein v. U. S., suit 4335," is an exhibit of a glazed cotton hat.

Sample marked "Importer's Exhibit 116, Jan. 31–08, suit 4335, Eckstein v. U. S.," is an exhibit of an artificial horsehair hat.

Sample marked "Ill. Ex. B" is a sample of wood pulp dissolved and made into threads by a process similar to the making of artificial horsehair (R., 57).

Sample marked "Ill. Ex. C" is a product of wood pulp similar to "Ill. Ex. B," but forced through a larger orifice (R., 58).

Sample marked "Ill. Ex. J" is an exhibit of No. 36 cotton yarn coated with the cellulose material used to produce "Ill. Ex. B and C" (R., 58).

Sample marked "Ill. Ex. K" is made in a similar way to "Ill. Ex. B and Ex. J."

Sample marked "Ill. Exhibits M and N" are exhibits of varieties of cotton yarn.

Sample marked "Ex. 1,147631, Feb. 21/05," is an official exhibit of artificial silk yarn; likewise "Ill. Ex. G."

LLOYD W. BOWERS,
Solicitor-General.
ALBERT H. WASHBURN,
Counsel for Respondent.

MAY 11, 1909.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES, PETITIONER,
v.
ALBERT ECKSTEIN.

No. 52.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The issue in this case is the proper classification for duty, under the tariff act of July 24, 1897, of certain imported merchandise known as artificial horsehair, or imitation horsehair. The United States claims it is dutiable as an unenumerated manufactured article (sec. 6, act of 1897); and the importer contends for the application of the cotton thread paragraph (par. 302) by similitude. It consists of continuous threads of cellulose material, either black or white in color, put up in skeins or on spools. It is made from chemically prepared cellulose, which is forced while in a plastic state through

apertures and then allowed to solidify to form a single solid and continuous thread. This resulting thread is not twisted in any way and is incapable of separation into subsidiary filaments. As its name indicates, it is a successful imitation of real horsehair. The foundation material, cellulose, is the chief constituent of the cell walls of all vegetable substances. In the commercial manufacture of cellulose for making this artificial horsehair the cheap waste fibers of cotton are used.

Such merchandise is not directly mentioned in any of the paragraphs of the tariff act, probably because it was not commercially known when the act was passed. The importations in question were classified by the collector at the port of New York as "similar" to silk yarn, and duty was collected at the rate of 30 per centum ad valorem, under the silk-yarn provision, paragraph 385, by virtue of the "similitude clause," section 7. The importer protested, claiming the merchandise to be dutiable at the appropriate rate under paragraph 302, by similitude to cotton yarn, or at the rate of 20 per cent under section 6, as a nonenumerated manufactured article. The tariff provisions mentioned read as follows:

> PARAGRAPH 302. Cotton thread and carded yarn, warps or warp yarn, in singles, whether on beams or in bundles, skeins or cops, or in any other form, except spool thread of cotton hereinafter provided for, not colored, bleached, dyed, or advanced be-

yond the condition of singles by grouping or twisting two or more single yarns together, three cents per pound on all numbers up to and including number fifteen, one-fifth of a cent per number per pound on all numbers exceeding number fifteen and up to and including number thirty, and one-fourth of a cent per number per pound on all numbers exceeding number thirty; colored, bleached, dyed, combed or advanced beyond the condition of singles by grouping or twisting two or more single yarns together, whether on beams or in bundles, skeins or cops, or in any other form, except spool thread of cotton hereinafter provided for, six cents per pound on all numbers up to and including number twenty, and on all numbers exceeding number twenty and up to number eighty, one-fourth of one cent per number per pound; on number eighty and above, three-tenths of one cent per number per pound; cotton card laps, ropings, sliver or roving, forty-five per centum ad valorem.

PARAGRAPH 385. Thrown silk not more advanced than singles, tram, organzine, sewing silk, twist, floss, and silk threads or yarns of every description, except spun silk, thirty per centum ad valorem; spun silk in skeins, cops, warps, or on beams, valued at not exceeding one dollar per pound, twenty cents per pound and fifteen per centum ad valorem; valued at over one dollar per pound and not exceeding one dollar and fifty cents per pound, thirty cents per pound and fifteen per centum ad valorem; valued at over

one dollar and fifty cents per pound and not exceeding two dollars per pound, forty cents per pound and fifteen per centum ad valorem; valued at over two dollars per pound and not exceeding two dollars and fifty cents per pound, fifty cents per pound and fifteen per centum ad valorem; valued at over two dollars and fifty cents per pound, sixty cents per pound and fifteen per centum ad valorem; but in no case shall the foregoing articles pay a less rate of duty than thirty-five per centum ad valorem.

SECTION 6. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this act, a duty of ten per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this act, a duty of twenty per centum ad valorem.

SECTION 7. That each and every imported article, not enumerated in this act, which is similar, either in material, quality, texture, or the use to which it may be applied to any article enumerated in this act as chargeable with duty, shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned; * * *

The Board of General Appraisers, after the taking of considerable testimony (R., 7–11, 16–55), reversed the action of the collector and sustained one of the importer's claims, viz, that artificial horsehair is dutiable as a nonenumerated manufactured

article, under section 6. But the board declined to hold such merchandise to be "similar" either to silk yarn or to cotton yarn. They say in their opinion (R., 13):

> The importers now come forward and by voluminous testimony show that this so-called artificial horsehair is wholly dissimilar to cotton yarn in construction, texture, and use. Cotton yarn, by the testimony before us, is an elongated strand made up of short staples and it must have at least 12 twists to the inch to be what is known as a yarn. Artificial horsehair has no staples and no twist whatever. It further appears that artificial horsehair is used for the same purposes as genuine horsehair, namely, in the manufacture of braids and trimmings. Inasmuch, however, as horsehair is on the free list the similitude clause can not be applied and it follows that the only proper classification for the article is under section 6, as an unenumerated manufactured article, at 20 per cent.

This decision of the board was, and still is, accepted by the Government as correct. (In fact, during the pendency of this hearing before the board, the Secretary of the Treasury issued instructions to collectors of customs, in T. D. 27350, May 16, 1906, to assess duty on imitation horsehair as a nonenumerated manufactured article at the rate of 20 per centum ad valorem under section 6.)

Although the board sustained the alternative

claim in the protest, the importer took an appeal to the Circuit Court. Much additional evidence was there taken on behalf of both the importer and the Government (R., 55–104), and the Circuit Court, passing upon this evidence as well as upon that before the board, affirmed the board's decision (R., 104). The court said (R., 105):

> The board of appraisers has assessed duty on this article under sec. 6 of the tariff act of 1897 as a manufactured article not otherwise provided for. The importers claim that it is dutiable under par. 302 as a cotton yarn by similitude, relying upon Hardt vs. United States, 146 Fed., 61, as conclusive authority in their favor.
>
> That case finds first that the article there considered is a "yarn"; that is assumed, and the only question discussed is whether it more resembles a silk yarn or a cotton yarn.
>
> Inasmuch as the material composing it was cellulose, which is almost the sole constituent of cotton, and is not found in silk, the artificial yarn then in question was held dutiable under par. 302 as more nearly resembling cotton than silk, the material of which the importation was composed being held to turn the scale.
>
> The material composing artificial horsehair is also cellulose, but the horsehair is not a yarn, because it has no twist, and is not composed of twisted or spun filaments. This, I think, is established by the trade testi-

mony, and the evidence of the commercial witnesses accords with the accepted definition of yarn.

Since this importation is not a yarn, it can not be assessed by similitude with cotton yarn or yarn of any other kind.

On further appeal by the importer, the Circuit Court of Appeals reversed the judgment of the Circuit Court, holding that the merchandise is similar to cotton yarn in material and in use. (*Eckstein* v. *U. S.*, 167 Fed., 802.)

The Government insists that no statutory similitude is established, and that the merchandise is therefore dutiable under section 6 of the tariff act of 1897 as an unenumerated manufactured article.

It is well established that the requirements of the similitude clause of section 7 are satisfied if there be shown a proper similarity in any one of the four particulars, " material, quality, texture, or use," named in that clause.

We proceed, then, to examine this artificial horsehair in the light of this rule. It is made out of cellulose, which, when prepared for manufacture, is wholly wanting in all the " quality " and " texture " of the waste cotton which was chemically reduced to obtain it. This cotton waste probably never existed as cotton yarn at any time. By not even the most distant analogy can similitude to cotton yarn in either quality or texture be asserted, and the importers in their briefs before the Circuit Court of Appeals, and before this court, opposing

the petition for a writ, made no claim of similitude in either quality or texture. And the Circuit Court of Appeals based its decision entirely upon an assumed similitude of artificial horsehair to cotton yarn in the other two statutory particulars, "material" and "use." The opinion of the Circuit Court of Appeals holds that "artificial horsehair is like cotton yarn in material, each being composed almost entirely of cellulose, and like it in use, being used largely as glazed cotton is in making hat braids, shoe laces, binding braids, tapes, and imitation horsehair." The only question before this court, then, is the correctness of the decision of the court in defining a legally recognizable similitude in material and in use, and in applying its definition to the facts in the case.

Statutory similitude has been held to be a *substantial* similitude in one or more of the particulars mentioned in section 7 of the tariff of 1897. (*Arthur* v. *Fox,* 108 U. S., 125, 128; *Stuart* v. *Maxwell,* 16 How., 150, 162; *Murphy* v. *Arnson,* 96 U. S., 131, 133; *Pickhardt* v. *Merritt,* 132 U. S., 252, 259.)

ARGUMENT.

I.

Substantial similitude in material is not established.

The artificial horsehair in suit is not made from cotton or cotton waste; it is made from cellulose, which, to be sure, enters into the cell structure of cotton as well as every other vegetable substance,

and in this particular case was derived from cotton fibers; but it bears no greater resemblance to cotton than it does to wood pulp. (R., 36.) By chemical reduction the vegetable structure other than cellulose is cleared away and the cellulose transformed from its condition in the cell walls into a viscous mass. This process is in all essentials the same whether the cellulose is extracted from cotton or from any other vegetable substance. Having isolated the cellulose by the operation referred to, it is next squeezed through apertures of proper size to form it into the threads or filaments known as artificial horsehair. (R., 56, 57, 58, 60, 74, 85.) These filaments of artificial horsehair are composed about 90% of amorphous cellulose. (R., 84, 85, 93, 103.) But the cellulose out of which artificial horsehair is made has no direct or necessary connection with cotton fiber. The chemical experts who testified all agreed that, from the chemist's point of view, cellulose derived from wood pulp or from flax would serve for the manufacture of artificial horsehair as well as cellulose derived from cotton (R., 86, 87, 95, 96, 97); and Waddell, a domestic manufacturer, testified (R., 36) that his factory uses wood pulp to derive cellulose from.

The Circuit Court of Appeals based its finding of similitude in material upon the single fact that artificial horsehair is made of cellulose and that cellulose enters largely into the chemical composition of cotton yarn. This proposition we most

earnestly and directly contradict. Similitude as to material for purposes of the tariff act can not in cases of ordinary merchandise be predicated upon chemical composition or cell structure. If that be the test, then this merchandise is equally similar to jute, flax, wood of all kinds, and numberless diverse and unrelated articles.

Webster's Dictionary defines cellulose as "the substance which constitutes the essential part of the solid framework of plants, or ordinary wood, linen, paper, etc." As the chemist Deghuee puts it, in this case (R., 86), "It is the material which forms the cell wall in all vegetable matter." It accordingly is found generally in nature, and in diverse forms. In one of these forms it is the chief chemical constituent of cotton fiber and hence of cotton yarn, and even of cotton cloth. But it is also the valuable constituent in the manufacture of paper from wood pulp (R., 89, 90, 93, 96); yet obviously neither the pulp nor the paper would be classified as cotton yarn by similitude for that reason. Wood is used for the manufacture of bedsteads, as well as of paper. If the paper and bedsteads were subjected to a chemical analysis it would be found that they were of precisely the same material, but if bedsteads were not otherwise provided for in the tariff, would anyone suggest that they should be taxed as paper under the similitude clause? Or would any two plants or other forms of vegetable matter be deemed similar because of the cellulose in each?

Carbon, for example, is the substance composing coal, lampblack, diamonds, and graphite, but it would be absurd to argue that diamonds should be classified as coal by similitude at the rate of 67 cents per ton if they were not enumerated in the tariff.

The conclusion is obvious that the expression "similar in material," as used in section 7 of the tariff of 1897, does not refer merely to a similarity or identity in the chemical elements which compose the material, but by common understanding involves a similarity in the physical characteristics of the material.

What similarity is there between cotton yarn and this imitation horsehair as materials, when their physical characteristics are considered?

In the first place, the basic cellulose itself is of an entirely different physical nature in the two articles. In cotton it has a definite cell structure, and the cells are arranged in a characteristic tenuous form. (R., 85, 87, 93, 94.) In the treatment with nitrogen or other chemical substances which are used in making artificial horsehair this structure is decomposed and wholly destroyed. The result is a structureless, amorphous mass (R., 85, 93, 94); or, as the importer's witness, Deghuee, says (R., 85): "Its physical characteristics, as viewed under the microscope, have been destroyed." Whether this change in the physical characteristics is due to a "mere physical condition or a chemical difference," is, as far as Deghuee is aware, not

known (R., 87). But at any rate the divergence exists, and it is, according to the chemist, Berry (R., 94), "radically as great as between diamond and the lampblack." If the particular importation had happened to consist of imitation horsehair whose source was wood pulp instead of cotton waste, the difference would have been in fact no greater than it is now.

It is therefore safe to assert that the resulting product no longer consists of cotton, and is not entitled to be considered in any legislative sense a "manufacture" of cotton. As was stated by this court in *Meyer* v. *Arthur* (91 U. S., 570, 576):

> When we speak of manufactures of wood, of leather, or of iron, we refer to articles that have those substances, respectively, for their component parts, and not to articles in which they have lost their form entirely and have become the chemical ingredients of new forms.

No two threads can be more dissimilar than cotton yarn and artificial horsehair. The one is composed of fibers and may be picked to pieces and restored to its natural state as cotton, while the other possesses no fiber and can not by manipulation be reduced to any form resembling cotton. The one is made by spinning and is in the form of twisted and interlaced fibers, and its tensile strength results from the friction one against the others of these interlaced fibers, while the other is a solid mass made by squeezing the cellulose

through apertures of proper size, and its strength is due entirely to cohesion between its atoms. There is no more substantial similarity between them than between horsehair and cotton yarn and not nearly so much as between a woolen and a cotton thread. To hold that they are similar in material would be to hold that there can be no material of which any kind of product can be woven, whether hair, reed, or bark, which, in the absence of a special duty upon it, should not be classified as cotton thread or yarn.

In *United States* v. *Proctor* (145 Fed., 126) the Circuit Court of Appeals for the First Circuit held that extract of nutgalls (a morbid growth on the oak), *though containing tannin as a component part,* is not "similar in material" to tannin, so as to be dutiable at the rate applicable to the latter article under the similitude clause in section 7 of the tariff of 1897. It was said (pp. 131, 132):

> Although the tannic acid sought as the result of such processes as the Board of Appraisers described exists in combination in the original mixture, yet that result is, for practical purposes, and, alike in popular and commercial phraseology, a new thing. For illustration, steam or the vapor resulting from steam is only water evaporated or sublimated; and yet neither in popular phraseology nor by the law of the courts is either regarded as water. So alumina is the characterizing ingredient of common clay, and

yet in no fair sense of the English language are they the same, either actually or by similitude, although by an expensive process alumina and its metal, aluminum, are derivable from the clay. * * * Here are, in effect, clear statements that, by the mere changes to which they have referred, from nutgalls, berries, and the like, the originals have entirely lost their character as such. All this illustrates perfectly the proposition which we make that, by the change, involving various processes, from extract of nutgalls to tannic acid, the original extract of nutgalls has also, in every proper sense, entirely lost its character as such. Indeed, as between extract of nutgalls and tannic acid, in view of the explanations we have made, it violates every sensible rule of the use of the English language, and speaks only with refined ingenuity, to assert similitude on account of some similarities "in material, quality, texture, or use," as spoken of by section 7 of the act of July 24, 1897 (ch. 11, 30 Stat., 205; U. S. Comp. St. 1901, p. 1693). By necessary implication, as well as by the force of the lines of decisions of the Supreme Court, customs legislation speaks in a natural voice to the persons or classes to whom it is addressed, according as those persons or classes are laymen, merchants, or men of science; and the attempt here to classify the mere filtrate of nutgalls as tannic acid or tannin is only one of the too numerous instances in which either the United

States or importers undertake to twist what is plainly written, contrary to this rule of construction, for the purpose of obtaining special results, in the interest of one or the other. Therefore we are compelled to reject the claim of the United States that the importations in question on this appeal should be classed as tannin or tannic acid by either direction or by similitude.

The importer relies on the decision in *Von Bernuth* v. *United States* (146 Fed., 61).

In that case the merchandise was admittedly a *yarn;* it was made by spinning or twisting together a large number of very fine fibers of cellulose material, so as to form a thread in imitation of silk and known as nearsilk or artificial silk. The question was whether such yarn more closely resembled silk yarn or cotton yarn. It obviously resembled them both to a considerable degree, and it had to be assessed by similitude to one or the other. The only problem presented was that of making a choice between the two forms of similitude. The court said (p. 62):

> In texture they are similar equally to cotton yarn and to silk yarn, consisting of fibrous threads or filaments. So in the use to which they may be applied, silk yarns, cotton yarns, and these yarns are all woven into fabrics for dress goods, upholstery purposes, and what not. So far as quality is concerned, they certainly resemble cotton yarn as much as they do silk yarn. As to

material, however, being made from cotton waste, a vegetable product, and being in their finished condition fiber-like threads of cellulose, they more nearly resemble cotton yarn than they do the threads or yarns of silk, which are spun from the cocoons of the silkworm. We are therefore of the opinion that they most resemble the yarns of paragraph 302, and, being nonenumerated, should be classified accordingly.

The question here is whether artificial horsehair, a single, large, solid, continuous filament, which can not be untwisted like cotton yarn or artificial silk, comes within the similitude clause or within the general provision for all articles not otherwise provided for.

The merchandise in the near-silk case was yarn, unquestionably, and it was held to be more like cotton than silk, because it was made of *vegetable matter*. On the other hand, the merchandise in the case at bar is not a yarn at all. An examination of the opinion in that case quoted above shows that the *vegetable* characteristic influenced the court, and not particularly the *cotton* characteristic. A yarn is a composite structure produced by spinning, i. e., twisting together a number of finer fibers or filaments. Even the " single " cotton yarn is composed of many small fibers put together by the spinning or twisting operation. The Board of General Appraisers found in their decision in this case (R., 13) that, according to the testimony be-

fore them, cotton yarn is "an elongated strand made up of short staples, and it must have at least 12 twists to the inch to be what is known as a yarn." Accordingly the board came to the conclusion that artificial horsehair is dissimilar to cotton yarn. The circumstances under which the board testimony (R., 16–55) was taken were somewhat peculiar. The Circuit Court of Appeals had shortly before decided the *Von Bernuth case,* holding artificial silk yarn to be dutiable by similitude with cotton yarn. The Government thereupon took the position that, in determining the appropriate rate of duty under the cotton-yarn paragraph (par. 302), the threads of artificial silk should be considered not as "singles," but as ply or grouped yarns, because of the fact that each artificial silk yarn was composed of various fine filaments twisted together. A test case was taken up by the board on this subject, and at the same time a test case was made up on the subject of artificial *horsehair,* the two cases being tried as one (R., 16, 17), without separate testimony for either case. It was on this record that the board rendered its decision in the case now at bar, as well as in the artificial silk case; those portions only of the testimony relating particularly to the artificial silk having been excluded in making up the record on appeal. The importer's witnesses, in testifying generally concerning the processes of making both artificial silk and artificial horsehair out of cellulose, convinced the board

that the artificial horsehair is not a yarn, the board holding (R., 13) that this fact was shown by "voluminous testimony" from the importers. Confirmation of the conclusion that artificial horsehair is not made of twisted fibers, and therefore is not a yarn is found in the statements of the witnesses Crowe (R., 19, 20, 22, 23), Humphrey (R., 25, 26, 53), Manley (R., 45), Chalmers (R., 41), Nussbaum (R., 55), and Burgess (R., 23), who testified before the board. Before the Circuit Court additional testimony was taken, under the practice then prevailing, on the artificial horsehair issue alone (R., 55–97), and that court affirmed the finding of the board, on consideration of the record before the board as well as the testimony of the additional witnesses, King (R., 77), Schloss (R., 79), and Pennal (R., 80).

These last-named witnesses were unable to see any resemblance between yarns and artificial horsehair. We submit that the findings of fact on this point by the board and the Circuit Court, like all findings of fact by the tribunal which heard the evidence, ought not to have been set aside by the Circuit Court of Appeals; and that in so doing its action was in direct conflict with the rule many times laid down in this court.

The truth seems to be that artificial horsehair resembles not a yarn of cotton or other fiber but a part of an animal, to wit, the hair of the tail or mane of a horse, of which it is a very successful

imitation. It is completely differentiated from the merchandise in the *Von Bernuth case.* Artificial silk was like yarn, but it was not more like one yarn than another until the examination had proceeded through physical characteristics into the field of chemical composition. Artificial horsehair is not like yarn in its most obvious aspects; hence no occasion arises for the consideration of its more obscure and remote qualities.

The *Von Bernuth case* having been necessarily mentioned, it is interesting to observe the final fate of the merchandise involved in it. The importers had won an apparent victory in that case, and the Government acquiesced; but the rate of duty attaching to the merchandise under the cotton schedule, if assessed as a *grouped* yarn, as contended by the Government in the test case above referred to, was so high that the importers finally abandoned their artificial silk protests in the test case (T. D., 27392; G. A., 6378), and at the same time they sought relief on the subject from the Treasury Department, claiming that the interpretation sought to be given the case by the Government would be ruinous to them. The desired relief was granted, and the *Von Bernuth case* was not applied, the importers agreeing to acquiesce in the classification of artificial silk or near silk by similitude to silk yarns as before. Such was the practice during all the rest of the life of the tariff act of 1897.

II.

Substantial similitude in use is not established.

Imitation horsehair is not similar in use to cotton yarn. The question is not whether the braids or hats made from artificial horsehair look like braids or hats made from cotton yarn, but *is whether the imported merchandise is similar to cotton yarn.*

The importers do not contend that this material is ever used for cotton yarn. Their contention is based wholly on the fact that cotton yarn which has been put through a manufacturing process, leaving the thread in a peculiar and unnatural condition, known as *glazed* cotton, is sometimes used as a substitute for genuine horsehair, in the same way in which this artificial horsehair is used.

A few illustrations will show the extravagance of the contention that this fact establishes similitude to cotton yarn in *use*. For instance, car wheels are usually manufactured of iron; but there has in recent years been discovered a process by which they can be made of paper. Suppose iron was not otherwise provided for, would it be insisted that it should be classified as paper because paper can be used in one form for the same purpose as iron?

In the same way, it would certainly be a very curious result to find dishes of china classified, under the similitude clause, as "manufactures of wood," by reason of the existence of dishes of wood, or to find linen napkins paying duty as "articles of paper," because similar in use to paper napkins.

If such a rule of law were applied it might be a very difficult thing, if, for example, leather shoes were not named in the statute, to determine whether they should pay duty as "manufactures of wood" or as "articles of lead" or as "wearing apparel of cotton," since there are such things as wooden shoes, divers' shoes of lead, and canvas shoes of cotton, all similar in use to shoes of leather.

If an importation were made of bales of straw—ordinary straw in its natural shape, but prepared for use in making straw hat braids—it probably would never occur to anyone to classify such merchandise (in case it were not directly enumerated) as similar to cotton yarn. And yet the similitude in use of this straw to cotton yarn would be quite the same as that of artificial horsehair to cotton yarn. In either case the sole peg upon which to hang a claim of similitude in use is the fact that a certain specialized and advanced form of cotton yarn is used in making hat braids.

Glazed cotton is one form of cotton yarn and the only one at all relied on to establish similitude. The cotton threads are covered with a gelatinous and polished substance which is intended to and does conceal the structure and quality of the thread. Importer's witness, Roehrig, admitted that other cotton yarns are not similar to glazed cotton, which is "polished cotton" and is only adapted to a use different from the uses of cotton yarn as such. (R., 66, 67.)

Glazed cotton yarn is worth $1.25 or $1.50 a pound, while artificial horsehair is worth about $2.25 per pound. (R., 71, 75.)

Similitude to cotton yarn in general must be established; that is, it must be shown that the *ordinary* use of both artificial horsehair and cotton yarn is to effect in a particular manner or process the same concrete result. This is a proposition which argues itself; the statement of it satisfies at once the reasoning faculty. That thing has not been done in the case at bar.

The decision of the Circuit Court of Appeals, in giving effect to a similitude in use with respect to *a changed and advanced form* of the enumerated merchandise, in spite of a complete absence of similarity in use to that enumerated class *as a whole,* is wholly at variance with other decisions of the same court. In *Paterson* v. *United States* (166 Fed., 733) the Board of General Appraisers had sustained the finding of the collector that certain horsehair hat braids (made of genuine horsehair) were dutiable by similtude to " braids made of silk " (par. 390, act of 1897), because of their similarity in use to one form of silk braid, viz, a silk *hat* braid. The court held, however, that this method of determining similtude was not permissible. On the contrary, the rule was laid down that when the collector examines the tariff act to find an article similar to the imported merchandise

> His examination is confined to the tariff act, and the comparison must be made with

> articles enumerated in the act. He is not authorized to institute a comparison between the imported article and one which he thinks should be, although it is not expressly, included in the paragraph selected by him.

The court then goes on to say:

> The only limitation in paragraph 390 is that the braids there enumerated shall be made of silk.
>
> If it had provided, eo nomine, for a silk hat braid, there would have been little room for criticism of the collector's action.

Accordingly the court disregarded the close similitude which really existed between horsehair hat braids and silk hat braids, and turned to the provision found in another paragraph of the act for "braids of straw, suitable for making hats," which constituted a direct enumeration of an article with a use similar to that of the imported horsehair hat braids. The horsehair hat braids were held dutiable by similitude to these straw hat braids.

The application of this line of reasoning to our present case is clear. The chief use of artificial horsehair is in making hat braids. (Eckstein, R., 57; Straus, R., 61–63; Roehrig, R., 65–67; Keller, R., 70, 71; Robison, R., 73; Schloss, R., 79.) If the tariff act had specifically enumerated " cotton yarn, suitable for making hat braids," or " glazed cotton yarn, suitable for making hat braids," or perhaps simply " glazed cotton yarn," then we would have had a proper case for the assessment of artificial

horsehair according to a similitude in use. But the use of cotton yarn in general is as far removed from that of artificial horsehair as is the use of silk braids in general removed from that of horsehair *hat* braids. We submit that the principle of the *Paterson* case is reasonable and should have been applied by the Circuit Court of Appeals in the case now at bar.

The *Paterson* case was specifically followed and approved by the Circuit Court of Appeals for the same circuit in the case of *United States* v. *Rheims* (175 Fed., 778). There the Government contended that real horsehair hats were dutiable by similitude to silk "wearing apparel" (par. 390 of the act of 1897), being similar in use to one form of silk wearing apparel, viz, ladies' silk hats, although silk *hats* were not specifically named in the act. The court declined to consider this point of view, and held the hats to be dutiable by a similitude to straw hats, which were specifically named in paragraph 409 and whose use was therefore specifically indicated. The opinion of the court does not discuss the problem, but merely refers to the *Paterson* case as decisive of the issue.

As was said with reference to similarity of material, so it may be said of similarity of use. There are no two threads made which are more dissimilar than the two in question, ordinary cotton yarn and this imitation horsehair. The former is never used for the same purpose as the latter. In order to adapt it for such use, cotton yarn must be specially

prepared for that purpose; and conversely, imitation horsehair is absolutely useless in the place of cotton yarn.

Imitation horsehair is in no sense an imitation of cotton yarn; rather can it be asserted that glazed cotton yarn is an imitation of artificial or natural horsehair. If natural horsehair were enumerated in the dutiable schedule (instead of in the free list, par. 571) its imitation would undoubtedly be dutiable by similitude thereto. The close physical resemblance between real and artificial horsehair, a resemblance visible to the most casual observer, clearly indicates a suitability for similar uses, and this is confirmed by the *Paterson case* and the *Rheims case,* which refer to hat braids and hats made of real horsehair, just as the testimony in the present case refers to the making of hat braids and hats from artificial horsehair. It by no means follows, however, that some other thing must be somewhere found to which it may be made dutiable by similitude. The law does not require the tracing out of the dutiable article which is *least dissimilar* to the imported merchandise. It may perfectly well be, and we believe is, dutiable as a distinct manufacture. In order to invoke similitude, it must be "substantial," and it must be a lawfully recognizable similitude, a similitude to the very merchandise directly enumerated in the act, not a mere subdivision or a casual, special. or, as here, advanced form thereof.

The attention of the court is especially invited to the samples of imitation horsehair and glazed cotton and of varieties of cotton yarn which have not been specially treated, all of which have been brought before the court. Inspection, without other evidence, is almost enough to demonstrate the impossibility of using artificial horsehair for the same purposes as cotton yarn.

The samples are the best evidence in support of the Government's contention that there is no substantial similitude between cotton yarn and artificial horsehair; and that similitude exists only between the horsehair and glazed cotton, which is cotton yarn plus a manufacturing process by which it is robbed of its quality and use as cotton yarn.

Wherefore the United States prays that the judgment of the Circuit Court of Appeals may be reversed and the decision of the Circuit Court affirmed and reinstated.

Respectfully submitted,

WILLIAM L. WEMPLE,
Assistant Attorney General.
MARTIN T. BALDWIN,
Special Attorney.

NOVEMBER, 1911.

O

Supreme Court U. S.
FILED
NOV 29 1911
JAMES H. McKENNEY,
Clerk.

No. 52.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES, PETITIONER,

v.

ALBERT ECKSTEIN.

ON CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE RESPONDENT.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1911.

No. 52.

THE UNITED STATES,
Petitioner,

v.

ALBERT ECKSTEIN.

ON CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE RESPONDENT.

Statement.

The issue is whether an article known as artificial horsehair, commercially included within the term "yarn," imported on spools and in skeins, produced from cotton fibres by a process of chemical spinning, is dutiable by virtue of the similitude clause (Section 7, Act of July 24, 1897, 30 U. S. Stats., 151) at the rate levied on yarns produced from cotton fibres by a process of mechanical spinning as provided in Paragraph 302 of said statute.

The process of manufacture is described by the Circuit Court of Appeals (Rec., 110) as follows :

> "It is made out of cotton waste, just as artificial silk is; and the process of manufacture is the same,

viz., the cotton waste is chemically dissolved and the solution forced through fine apertures, solidifying into filaments when they reach the air, which are then grouped or twisted together into artificial silk. In making horsehair the solution is forced into water first, where the filaments are grouped together into one single thread before they solidify."

Prior to ~~May 16~~ Jan 31, 1906, the date of issuance of T. D. 27073 ~~27350 (Government's brief, p.)~~ artificial horsehair yarn was classified by the customs officials, as were the various shipments involved in this case, under paragraph 385 as silk *yarn* by similitude by virtue of Section 7. It is now contended, in accordance with a somewhat belated theory of the Treasury Department, that it should be assessed as a non-enumerated manufactured article under Section 6.

The decision below, which the United States seeks here to review, followed a decision by the same court (*Von Bernuth vs. United States*, 146 Fed. Rep., 61), wherein it was held that artificial silk yarn—*which differed from artificial horsehair yarn only in that its filaments were thinner*—was dutiable as cotton yarn by virtue of similitude as to material. Both artificial silk and artificial horsehair, as stated by the Circuit Court of Appeals in the case at bar, are made out of the same material, to-wit, cotton waste, and the process of manufacturing both is the same. Upon the advice of the Attorney General, the Treasury Department formally acquiesced in the *Von Bernuth* decision (Treasury Decision 27073), and this decision has never been judicially modified or sought to be so modified.

The Board of General Appraisers as more particularly referred to in Appendix A insisted upon consolidating the trials of the artificial silk and artificial horsehair cases, action in which cases was suspended pending the determination of the *Von Bernuth* case, *supra* (Rec., 16, 17). At that trial the importers did not contest the artificial horse-

hair issue because there was no controversy with respect thereto,—the Government was then classifying it as a cotton yarn single by similitude as here claimed (Rec., 53). The "voluminous testimony" referred to in Board's opinion (Gov. brief, p.) was testimony introduced on artificial silk to establish that the single filaments of artificial silk (in themselves lacking sufficient tensile strength to be used commercially) more closely resembled a single fibre of cotton rather than a single cotton yarn made up of twisted fibres. The Board's holding that artificial horsehair was dissimilar to cotton yarn, is therefore based primarily on a record relating to artificial silk. No testimony as to use or material of artificial horsehair here in controversy was before the Board. When the case reached the Circuit Court, testimony for the first time was introduced with respect to the use and material composing this artificial horsehair. (Rec., 55 to 104, incl.). The Circuit Court held that the merchandise was not dutiable by similitude to cotton yarn upon the theory that it was not a yarn, it having no twist and not being composed of spun or twisted filaments. The Court apparently overlooked the fact that artificial horsehair was made of a number of filaments, grouped before they solidify, as found by the Circuit Court of Appeals; and the further fact that *commercially* artificial horsehair was a yarn. The Circuit Court made no finding as to whether in material or in use the merchandise resembled cotton yarn. On the other hand, the Circuit Court seemed to rest its decision solely upon the theory that in its judgment artificial horsehair, not being similar in texture to cotton yarn, could not, therefore, be assessed by similitude to cotton yarn. This decision entirely overlooked the fact that an article, although not similar in texture, could by similitude be assessed at the same rate of duty levied upon cotton yarn, because of similarity in any one of the other statutory particulars of similitude, for instance, similarity

in use or material. If, of course, artificial horsehair is similar to cotton yarn, either in use or material in the statutory sense, then it becomes immaterial, so far as this case is concerned, whether it is similar in texture or not, as substantial similitude in any one of the particulars mentioned in the Act is sufficient. The requirement is not that it shall be similar in all particulars.

The error which we believe we have thus pointed out in the decision of the Circuit Court was clearly perceived when this case reached the Circuit Court of Appeals, and that Court, admitting that artificial horsehair in texture was dissimilar to cotton yarn, nevertheless held that it was similar to cotton yarn in two of the other statutory particulars of similitude, to wit, in use and material, and this being so it was not essential that there be a similarity in texture. In other words, the Circuit Court seized upon only one of the statutory particulars of similarity, to wit, similarity of texture, and in its judgment finding that artificial horsehair did not have that particular similarity, refused to apply the similitude clause. On the other hand, the Circuit Court of Appeals, recognizing that there would be a compliance with the similitude clause if artificial horsehair was similar in any one of the four statutory particulars, and finding that artificial horsehair was, in fact, similar in use and material, of course, found it necessary to reverse the Cicuit Court.

The tariff provisions mentioned read as follows:

> "SEC. 7. That each and every imported article, not enumerated in this Act, which is similar, either in material, quality, texture, or the use to which it may be applied, to any article enumerated in this Act as chargeable with duty, shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned; and if any non-enumerated article equally resembles two or more enumerated articles on which different rates of duty are chargeable, there

shall be levied on such non-enumerated article the same rate of duty as is chargeable on the article which it resembles paying the highest rate of duty; and on articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material thereof of chief value; and the words 'component material of chief value,' wherever used in this Act, shall be held to mean that component material which shall exceed in value any other single component material of the article; and the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article. If two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates."

"PAR. 302. Cotton thread and carded yarn, warps or warp yarn, in singles, whether on beams or in bundles, skeins or cops, or in any other form, except spool thread of cotton hereinafter provided for, not colored, bleached, dyed, or advanced beyond the condition of singles by grouping or twisting two or more single yarns together, three cents per pound on all numbers up to and including number fifteen, one-fifth of a cent per number per pound on all numbers exceeding number fifteen and up to and including number thirty, and one-fourth of a cent per number per pound on all numbers exceeding number thirty; colored, bleached, dyed, combed or advanced beyond the condition of singles by grouping or twisting two or more single yarns together, whether on beams or in bundles, skeins or cops, or in any other form, except spool thread of cotton hereinafter provided for, six cents per pound on all numbers up to and including number twenty, and on all numbers exceeding number twenty and up to number eighty, one-fourth of one cent per number per pound; on number eighty and above, three-tenths of one cent per number per pound; cotton card laps, roping, sliver or roving, forty-five per centum ad valorem.

"SEC. 6. That there shall be levied, collected and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this Act, a duty of ten per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this Act, a duty of twenty per centum ad valorem."

ARGUMENT.

I.

The question of the similitude is one of fact.

Erhardt vs. Steinhardt, 153 U. S., 177.
Herman vs. Arthur's Executors, 127 U. S., 363, 370.
Wills vs. Russell, 100 U. S., 621.

The Court below found substantial similitude both in use and material to cotton yarns. It follows that the government is asking this court to reverse the action of a court below based upon a question of fact; that the respondent may rely upon the well-established rule prohibiting a reversal of a judgment based upon such finding unless there is no evidence to sustain it.

II.

Similitude does not mean identity.

If it did, then it would never be effective, because the imported merchandise would be directly and specifically provided for and recourse could never be had to the simili-

tude clause. As stated in United States vs. Roessler (C. C. A.) 137 Fed. Rep., 770, it was said:

> "The counsel for appellant have taken pains to point out numerous instances wherein the two articles differ, but it must be borne in mind that the statute does not require identity; if that were necessary the statute would have no raison d'être. *It is enough if there be a substantial similitude in any one of the particulars mentioned*—material, quality, texture or use (Arthur v. Fox, 108 U. S., 125, 2 Sup. Ct., 371, 17 L. Ed., 675)." (Italics ours.)

See also on this point and that of substantial similitude:

Greenleaf vs. Goodrich, 101 U. S., 278, 283.
Fisk vs. Arthur, 103 U. S., 431.
Arthur vs. Fox, 108 U. S., 125.
Pickhardt vs. Merritt, 132 U. S., 252.
Stuart vs. Maxwell, 16 How., 150.
Mandell, et al., vs. Seeberger, 39 Fed., 760.
In re Herter Brothers, 53 Fed., 913.
United States vs. Dana, 99 Fed., 433.
Hahn vs. United States, 100 Fed., 635.
Tiffany vs. United States, 112 Fed., 672.
In re Guggenheim Smelting Co., 112 Fed., 517.
Waddell & Co. vs. United States, 124 Fed., 301.
Rich vs. United States, 176 Fed., 732.

III.

The evidence establishes that substantial similitude exists in use to cotton yarn.

Manifestly, a given cotton yarn cannot be used for *all* the purposes of *all* cotton yarns. Cotton yarns have four broad, general uses, to wit, knitting, weaving, sewing and

braiding (Rec., 57; Rec., 61). A yarn used in knitting is different from one used for sewing or braiding. The statute (Par. 302) covers cotton yarns regardless of their use, but it provides varying rates of duty depending upon number, condition and ply, so that a thick, heavy, stiff yarn, used for hat braids, by this carefully regulated paragraph, pays a lower duty than a fine, light, sewing yarn of high number. And the yarns differ in character of twist, a loose twist giving a soft yarn and a compact twist a very hard, firm yarn. The looseness or compactness of twist depends upon the ultimate use of the particular yarn. Thus, knitting yarns or darning yarns, such as Ex. N, have a small degree of twist, whereas weaving yarns, by comparison, take a great deal of twist (Rec., 29, 64). Again, weaving yarns vary widely as to twist, for it is obvious that soft-finished goods, such as fabrics, call for a relatively loosely twisted yarn compared with the really stiff, hard twisted yarn necessarily entering into hat braids, which require a hard, firm finish. It requires no argument to show that a cotton hat braid must be made of a yarn which is both stiff and hard twisted; because a hat made of soft braid would not retain its shape. In this group of hard twisted yarns, we, therefore, find the cotton yarn used in the production of hat braids, and in the same commercial group appears the article in suit (Rec., 61, 62, 65, 73).

That is its chief use.

Rec., 57, 61, 62, 65, 73, 79.

It has, however, in common with cotton yarns, other uses.

Rec., 62, 65, 68.

In *Pickardt vs. Merritt*, 132 U. S., 252, page 258, this Court approved the following charge on similitude:

> "That if any one of the articles bore a similitude or resemblance, in material or quality, to what were

known as aniline dyes in 1874 it was dutiable at the same rate as an aniline dye; that if either of them bore a similitude in the use to which it might be applied to aniline dyes known and in use in 1874, it was dutiable at the same rate as an aniline dye; that the mere application to the dyeing of fabrics would not create the similitude, but that if there was a similitude in the mode of use, a similitude in the same kind of dyeing, producing the same colors in substantially the same way so as to take the place of aniline dyes in use, there would be a similitude in use."

In *Arthur vs. Fox, 108 U. S., 125,* the goods under consideration were so-called velours, composed of cow or calf hair, vegetable fibre and cotton, cow or calf hair chief value, and used, like goat's hair and cotton goods, in imitation of seal skin, for manufacturing hats and caps. The question was whether they should be classed for duty purposes under the provision for "manufactures of cotton, not otherwise provided for" or under the provision for "all *manufactures* of every description *composed* wholly or *in part of* worsted, *the hair of the* alpaca, *goat* or other like animals, *except such as are composed in part of wool, not otherwise provided for*" (material parts of statute are underscored); and the Court held that they were dutiable by similitude as manufactures in part of goat hair, although there was no goat hair whatever in their composition, the point, however, being that they were used like the goat hair goods to imitate seal skin. The Court in its opinion cited *Stuart vs. Maxwell, 16 How., 150:*

> "Manufacturing ingenuity and skill have become very great, and diversities may be expected to be made in fabrics adapted to the same rules and designed to take the same place as those specifically described by some distinctive marks for the mere purpose of escaping from the duty imposed thereon. And it would probably be impossible for Congress,

by legislation, to keep pace with the results of these efforts of interested ingenuity."

And further said:

"The goods in question are 'non-enumerated.' But they are substantially like a manufacture of goats' hair and cotton which is enumerated. They are put to the same uses, look the same, and frequently in commerce are called by the same name.

* * * "To say that goods made of cow or calf hair and cotton, which were in all respects like goods made of goats' hair and cotton, and applied to the same uses, often bearing the same name in commerce, were to be dutiable at one rate as manufactures of cotton, when the goats' hair goods were assessed at a much higher rate, would be to encourage evasions of the descriptive terms in the tariff laws by some trifling or colorable change in the fabric or some of its incidents."

In the present case, due to new discoveries and manufacturing ingenuity, a chemical process of spinning has been substituted for the mechanical process of spinning. This was reduced to a commercial use about 1899 (Rec., p. 66), subsequent to the passage of the law under consideration. The effect of the government's position is to impose a penalty upon such ingenuity by insisting on a greater tax on the chemically spun cotton yarn than on the mechanical spun cotton yarn although both are used for the same purpose and made of the same material.

In the new tariff law of 1909 special provision is made for these goods in paragraph 405, providing for "yarns, threads, filaments of artificial or imitation silk, or of artificial or imitation horsehair, by whatever name known, and by whatever process made."

That cotton yarn is used to make hat braids was recognized in *Arthur vs. Zimmerman*, 96 U. S., 124, interpre-

tating the tariff acts of 1861 and 1862 and in *Zimmerman vs. U. S.*, 61 Fed. Rep., 938, involving the classification of hat braids made of cotton yarns imported in 1890 and 1891.

The fact that this Court recognized the use of cotton in the making of braids for hats as far back as the Act of 1861 is proof of a large commercial use of cotton yarn for that purpose.

It is one of the four broad uses of cotton yarn and such yarn is dutiable under paragraph 302 of the present law, whereunder the merchandise in suit is claimed dutiable by similitude.

One of the many varieties of cotton yarn used in making hat braids is known as glazed cotton yarn. Such merchandise has been uniformly classified for customs purposes as a cotton yarn, and so far from being a highly specialized and unusual commodity, it has been an important article of commerce for at least thirty years.

> *Downing vs. U. S. (C. C. A.), 109 Fed. Rep., 885; T. D. 20556; G. A. 4334, Jan. 16, 1899, and T. D. 23283; G. A. 4994.*
> See, also, Rec., 61, 66, 68, 73.

An examination of Ill. Ex. 105 (Artificial Horsehair Braid), Ill. Ex. 107 (Glazed Cotton Braid), Ill. Ex. 109 (Braid composed of Artificial Horsehair and Glazed cotton mixed), Ill. Ex. 115 (Glazed Cotton Hat), and Ill. Ex. 116 (Artificial Horsehair Hat), which, among others, are submitted by stipulation for the inspection of the Court will establish at a glance the close and substantial similarity in use, and upon this question of use solely, the language in *United States vs. Roessler, supra*, is directly in point, to wit,

> "Ferro-chrome and ferro-manganese look alike; even the experts are unable to tell them apart, and they are similar in quality and in use."

So, in the case of this merchandise, it resembles and looks like the cotton yarn used for making hat braids ; indeed, experts find difficulty in discovering any difference between them.

IV.

The evidence establishes that substantial similitude exists in material to cotton yarn.

The respondent does not rest his claim as to similarity of material upon the proposition that, because cellulose is found in cotton and in the merchandise under consideration, that one is similar to the other in material. This seems to be the government's view of respondent's claim. This, however, is not the contention. Respondent claims similitude in material because the proportion of the ingredients —cellulose, water, etc.—*is the same as the proportion of the same ingredients as exist in cotton.*

The goods are made of cotton fibres. Cotton consists of pure cellulose with a small percentage of hydroscopic water (Rec., 95). The merchandise in suit is pure cellulose with a small percentage of hydroscopic water; it differs only from the cotton fibre in that the cell structure has been broken down. Other than this, cotton and the merchandise in suit are identical in material. No element is found in cotton which is not present in this merchandise ; no element is in this merchandise which is not found in cotton, and the proportion of elements in both is approximately the same.

> " Q. In taking cotton or cotton waste and subjecting to the process as is done in the Chardonnet method—with which I believe you are familiar ?
>
> " A. Yes.

"Q. The effect is to change the structural character only of the cotton, is that true, and convert it into cellulose?

"A. Yes.

"Q. As far as the material is concerned there is no change?

"A. Not essentially, no."

Berry, Gov. Chemist (Rec., 95).

"Q. How does the percentage of pure cellulose in artificial horsehair compare with the percentage of cellulose in raw cotton or cotton waste, allowing for a percentage of mineral matter and moisture in each instance?

"A. Essentially the same."

(Berry, Gov. Chem., Rec., 95).

It is a comparison in material between cotton yarn with its respective elements in their respective proportions and artificial horsehair yarn with its respective elements in their respective proportions.

The respondents do not rest their case on a claim that because cellulose is found in both cotton and the goods in suit that therefore there is a similitude in material. They assert that the proof is uncontradicted that in all chemical elements and in their respective proportions artificial horsehair yarn is similar to cotton yarn in material.

If the cell structure were restored we would have pure cotton. We submit a closer similitude in material could not in fact exist without reaching the point of identity.

The government is inconsistent in its position. It concedes (brief page 15), that the artificial silk of the *Von Bernuth* case which is made from the same material as artificial horsehair, is dutiable by similitude. We quote from government brief, page 15, speaking of artificial silk:

"The question was, whether such yarn more closely resembled silk yarn or cotton yarn. It obvi-

ously resembled them *both to a considerable degree and it had to be assessed by similitude to one or the other.*" (Italics ours.)

In other words, here is unequivocal recognition that in the case of artificial silk there is a similitude to cotton yarn in the statutory sense, especially emphasized by the court.

It is true, as stated by the Government (brief, 9), that Ill. Ex. B, produced by the witness Waddell, was made from wood pulp; but it is equally true that the company which produced it was not commercially marketing its product; the company was in its experimental and developing stage; in its entire existence it had not sold more than one thousand pounds of its product (Rec., 38, 39). Further, it was the successor of a mill that failed, and this failure was due to the poor quality of its product (Rec., 35).

> "Q. Was the cause of its failure due in any respect to the product turned out by it?
>
> "A. Yes, I think it was mainly due to the product not being up to market requirements."

The only commercial witness who testified that artificial horsehair could be made from wood pulp as well as from cotton thus acknowledges frankly that the horsehair so produced from wood pulp is of inferior quality, and that it was the moving cause of his firm's failure. That it is practically or commercially possible to manufacture artificial horsehair from wood pulp is, therefore, far from established by any evidence in the record. Theoretically, of course, it is possible to so manufacture it. But this is all that the evidence of the commercial witness Waddell, as well as the chemists, tend to show (Deghuee, R., 85, 86, and Berry, R., 95).

V.

The Procter, Patterson, Rheims cases, referred to by the Government discussed:

United States vs. Procter, 145 Fed. Rep., 126, involved a claim by the United States, that extract of nutgalls was dutiable by similitude in material to tannin because it contained tannin as a component part, just as carbon is an ingredient in coal, lampblack, diamonds and graphite, as referred to by the government (brief p. //). The Court said:

> "We are unable to perceive any natural similitude whatever in the direction claimed by the United States; that is, between extract of nutgalls and tannin or tannic acid. It is true that one of the component parts of the extract of nutgalls is tannin, and this probably not in chemical combination, but only as a component; but, in order to obtain from that extract the tannic acid of commerce, or tannic acid as it is chemically known, a long series of chemical combinations and precipitations, such as we have described, is necessary."

Attempt is made to parallel the present case to the rule in the Proctor case. The difficulty, however, lies in the facts—they are totally different. As before pointed out, all the elements in the same proportion are found in cotton yarn and in this material; it is not a case of one of a number of elements composing this material that is found in cotton, but is a case where all the elements are found in both articles in the same proportions; therefore reference to pulp, paper, bedsteads, straw, etc., which contain other elements and different proportions of similar elements, can have no argumentative force.

Petitioner asserts that the ruling in the present case is

inconsistent with the ruling of the same court in *Patterson vs. United States*, 166 Fed., 733. This is denied. The issue in the *Patterson* case was whether hat braids made of real horsehair were dutiable by similitude to silk "braids" or to "braids composed of straw suitable for making hats." The goods were dutiable by similitude to both "silk braids" and to "straw hat braids." Under Section 7 it was necessary to determine which enumerated article "it most resembles in any of the particulars before mentioned." As stated by the Court:

> "In brief, the question is this: Does a horsehair hat braid bear greater similitude to a straw hat braid than it does to a silk braid? We have no hesitation in answering this question in favor of the importer. As between the two paragraphs in question we have no doubt that the importer has chosen the more specific."

The case of *United States vs. Rheims*, 175 Fed., 778, involved the same principle, the court holding that real horsehair hats more nearly resembled merchandise covered by the provision for untrimmed "hats of straw" than that covered by the more general provision for "silk wearing apparel." The goods substantially resembled the merchandise covered by both provisions in the statutory particulars of similitude, but one provision more narrowly described the merchandise.

Further analyzed, the *Patterson and Rheims* cases show the established departmental construction of the similitude clause of including within the provision for silk braid a special form of braid, to wit, a real horsehair hat braid, and under the provision for silk wearing apparel "a special form of wearing apparel, to wit, real horsehair hats" (see Treasury Decision 28384, Abstract 16500, August 14, 1907). They would remain dutiable under those provisions

unless there be some other provision in the tariff act which they more closely resembled. In the *Paterson* case the goods more clearly resembled straw hat braids than silk braids; in the *Rheims* case the real horsehair hats more closely resembled the straw hats than silk wearing apparel, and in the *Von Bernuth* case the artificial silk yarn more closely resembled cotton yarn than silk yarn. In the present case there is no question of relative specificness of similitude. It is only a question of any substantial similitude to cotton yarn in any of the statutory particulars of material, quality, texture or use. And its clause, as its terms expressly indicate, is only applicable to articles *not* enumerated in the law. The fear of the Government that the similitude clause may be invoked with respect to paper car wheels, china dishes, linen napkins, leather shoes, straw is groundless; these articles are specially provided for in paragraphs 407, 96, 208, 346, 407 and 438, respectively, and the similitude clause is never invoked in the case of articles specifically provided for or enumerated in the tariff act.

VI.

The merchandise is a yarn commercially.

The government denies that the merchandise is a yarn. Whatever it may be from the viewpoint of technical experts, it is clear that commercially it is a yarn. Neither the Board of General Appraisers nor the Circuit Court found that substantial similitude in material or use to cotton yarn was lacking. They placed their decisions upon the ground that the merchandise was not structurally a yarn. This was error, for manifestly, if the article has the structure, is made of the same material and used for the same purpose, the

article imported would be the *precise* thing named in the statute, and, as before pointed out, there never could be any application of the similitude clause.

But the merchandise is in fact commercially a yarn. Excerpts from the record, set forth in appendix B herewith, establish this fact. The testimony offered by the respondent came from yarn dealers, men who dealt not in one kind of yarn, but in many kinds, and who, it is significant to note, handled artificial horsehair and cotton yarns in the regular course of business. The testimony of these witnesses was practically unanimous to the effect that the merchandise in suit was bought and sold as a yarn, was used as a yarn, responded to all the practical tests of a yarn, and would have been *regarded by the trade as a species of yarn in 1897* and prior thereto.

The official report of the tariff hearings, discloses that when the Tariff Act of 1909 was being prepared, a Committee appeared asking for a rate of duty on artificial silk and artifical horsehair *yarns*, and they filed a "Brief of the Manufacturers of Artificial Silk and Artificial Horsehair *Yarns* of the United States" (See Tariff Hearings before the Committee on Ways and Means of the House of Representatives, 60th Congress, First Print No. 23, p. 3018). There was also filed (p. 3020) a "Brief of the Braid Manufacturers of the United States," in which artificial silk and artificial horsehair were referred to as "yarns * * * manufactured from solutions of cellulose." This brief was signed by Henry W. Schloss, President, who was one of the Government witnesses called before the referee in the case at bar (Rec., 78). These official Government publications show that domestic manufacturers are a unit in regarding artificial horsehair as a yarn, precisely as the importers claim.

And subsequently Congress apparently followed this appeal by providing in paragraph 405 of the Tariff Act of August 5, 1909, for such chemically manufactured yarns.

The respondent's case, in a word, is set forth by Government's witness Manley (Rec., 46):

> "Q. If science has devised a process by which a a yarn can be spun without twisting together cotton fibres, would you consider that a yarn, even if the fibres were not twisted?
>
> A. Certainly; yes."

We print herewith as Appendix C of this brief the unanimous opinion of the Circuit Court of Appeals in this case.

VII.

It is respectfully submitted that the finding of the Circuit Court of Appeals for the Second Circuit that the merchandise in suit bears a substantial similitude to cotton yarn in the statutory particulars of use and material is supported by the evidence and should be affirmed.

WADE H. ELLIS,
JOHN A. KRATZ, JR.,
Attorneys for Respondent.

October, 1911.

APPENDIX.

A.

The *Von Bernuth* case was decided on January 16, 1906. The formal Government acquiescence was dated January 31st, 1906. When the protests on the suspended files of the Board of General Appraisers came to be taken up, a controversy developed as to the structure and character of the long individual filaments composing the artificial silk yarn. The Government took the ground that each of these filaments (which can be seen by a reverse twist of sample marked Ex. 1, 147,631, referred to in the stipulation covering samples submitted for inspection), was, for duty purposes, to be regarded as a cotton yarn single. This would make said Ex. 1 dutiable not as a single yarn but as a 12 or 14 ply yarn. The importer's position, on the other hand, was that said Ex. 1 must be regarded as a single and not a ply yarn because :

(1) The longer individual filaments composing artificial silk are more closely assimilated to the shorter individual fibres composing cotton—both being by a twist united into a single yarn, and both capable by a reverse twist of being resolved again into individual filaments, fibres or strands.

(2) Before a yarn could be regarded as a yarn commercially, it must possess sufficient tensile strength to be used commercially for the purposes of a yarn, *i. e.*, knitting, weaving, sewing or braiding. This tensile strength was usually imparted by the twisting or interlocking of the filaments or fibres. It was insisted that the individual filaments did not have the tensile strength a yarn must possess.

Upon the issue thus joined the testimony before the board (Rec., 7–55) was taken as clearly appears from the colloquy

of counsel (Rec., 16–17). Indeed only excerpts of the board testimony appear in the printed record.

At the time of the board hearing there was no dispute whatever between the government and importers as to the status of the merchandise in suit (Rec., 16, 53). Then, and for several months following the acquiescence of January 31st, it was passed as a single cotton yarn by similitude (Rec., 58, 62, 66).

Allusion is made in the government brief (p. 19) to the final fate of the *Von Bernuth* case. The method of determining the number of artificial silk yarn was never judicially determined—as required by the cotton yarn schedule—but the method pursued by the government of regarding the separate filaments of artificial silk as single yarns worked such appalling results that the importers, in the face of an intimation that such an interpretation might be applied to past as well as future shipments, felt constrained to abandon their contention and to acquiesce without protest in the original classification during the remainder of the lifetime of the Act of 1897.

B.

STRAUS:

> "Q. Tested by your definition are the official exhibits in this case (said official exhibits here shown to witness) yarns?
>
> "A. Yes, sir.
>
> "Q. In order for yarns to be fitted for the various uses which you have enumerated, what quality or qualities must they possess?
>
> "A. Tensile strength, principally" (Rec., 61).
>
> * * * * * *
>
> "Q. Measured by the amended definition which you gave us quite a short time ago, would these artificial horsehair yarns be regarded as yarns by

the trade and have been so regarded by the trade in July, 1897, and prior thereto?

"A. Yes, sir" (Rec., 64).

* * * * * *

"Q. Is artificial horsehair yarn like these official exhibits carried generally by the yarn people?

"A. By those yarn dealers you sell braid and millinery supply yarns" (Rec., 64).

ROEHRIG:

"Q. What kind of yarns do you carry?

"A. Polish cotton or glazed cotton, and silk, artificial horsehair.

"Q. What else?

"A. Mercerized cotton."

(Rec., 65.)

LITTAUER:

"Q. How many years have you been engaged in the yarn business?

"A. 28 years.

"Q. Tell us what kinds of yarn you carry?

"A. Silk, cotton, worsted, artificial silk, artificial horsehair, polished threads, glazed cotton yarns, tinsel yarns."

(Rec., 68.)

* * * * * * *

"Q. Measured by your amended definition, would artificial horsehair like the official exhibits here in suit (now shown the witness) have been regarded as yarns by the trade in July, 1897?

"A. Yes."

(Rec., 68.)

KELLER:

"Q. Isn't artificial horsehair bought and sold as artificial horsehair?

"A. And yarns. They are both synonymous."

(Rec., 71.)

* * * * * *

ROBISON:

"Q. What kind of yarns do you carry?

"A. We carry cotton yarns, polished or glazed yarns, artificial silk yarns and artificial horsehair yarns, tinsel yarns. That is about the scope."

(Rec., 73.)

* * * * * *

"Q. You are familiar with the yarn trade, are you?

"A. I am.

"Q. Is artificial horsehair carried by yarn people?

"A. Yes."

(Rec., 74.)

C.

ALBERT ECKSTEIN, Appellant, vs. THE UNITED STATES, Appellee.	4335. Appeal from the Circuit Court of the United States for the Southern District of New York.

Before LACOMBE, COXE and WARD, circuit judges.

WARD, Circuit Judge.

The merchandise in question is artificial horsehair. It is made out of cotton waste, just as artificial silk is, and the process of manufacturing is the same, viz., the cotton waste is chemically dissolved and the solution forced through fine apertures, solidifying into filaments when they reach the air, which are then grouped or twisted together into artificial silk. In making horsehair the solution is forced into water first, where the filaments are grouped together into one single thread before they solidify.

It is conceded that artificial horsehair is not enumerated

in the tariff act, not being silk yarn under par. 385, nor cotton yarn under par. 302. The Government has classified it under the basket clause, sec. 6, as a manufactured article not enumerated or provided for in the act, whereas the importer contends it should be classified under sec. 7 as a non-enumerated article similar to cotton yarn. We have held in Hardt von Bermuth & Co. vs. United States (146 F. R., 61) that artificial silk should be so classified. The judge of the circuit court affirmed the government's classification distinguishing that case on the ground that artificial silk was found to be a yarn, whereas artificial horsehair, being solid and not composed of twisted or spun filaments, is not a yarn. Admitting that this is so, still artificial horsehair is like cotton yarn in material, each being composed almost entirely of cellulose and like it in use, being largely used as glazed cotton is in making hat braids, shoe laces, binding braids, tapes and imitation horsehair. We think these resemblances establish its similitude to cotton yarn, even if the texture of the two articles is different. It is no ground for abandoning the tests of similitude established by Congress that their application may result in artificial horsehair, colored, bleached, or dyed, etc., always paying the lowest duties under paragraph 302, while artificial silk and cotton yarn pay duties increasing accordingly to the number of threads of which they are composed, Wing & Evans, vs. United States.

The judgment is reversed.

UNITED STATES *v.* ECKSTEIN.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 52. Argued November 10, 1911.—Decided December 4, 1911.

Section 7 of the Dingley Tariff Act of June 24, 1897, c. 11, 30 Stat. 159, known as the similitude clause, does not require that there shall be similarity of material, quality, texture and use in all four particulars, but a substantial similarity in one particular may be adequate to classify an article thereunder.

Imitation horsehair was properly classified under the similitude clause with cotton yarn enumerated in paragraph 302 of the Tariff Act instead of with silk yarn under paragraph 385, there being a substantial similitude with the former both as to material and use, even if not as to quality or texture.

167 Fed. Rep. 802, affirmed.

THE facts, which involve the correct classification, under the tariff act of 1897 of artificial horsehair, are stated in the opinion.

Mr. Assistant Attorney General Wemple, with whom *Mr. Martin T. Baldwin, Special Attorney*, was on the brief, for the United States:

The Government insists that no statutory similitude is

established, and that the merchandise is therefore dutiable under § 6 of the tariff act of 1897 as an unenumerated manufactured article.

The requirements of the similitude clause of § 7 are satisfied if there be shown a proper similarity in any one of the four particulars, "material, quality, texture, or use," named in that clause.

Artificial horsehair is made out of cellulose, which, when prepared for manufacture, is wholly wanting in all the quality and texture of the waste cotton which was chemically reduced to obtain it. This cotton waste probably never existed as cotton yarn at any time. By not even the most distant analogy can similitude to cotton yarn in either quality or texture be asserted, and the importers have not heretofore made any claim of similitude in either quality or texture. The court below based its decision entirely upon an assumed similitude of artificial horsehair to cotton yarn in the other two statutory particulars, material and use. The only question before this court is the correctness of the decision of the court in defining a legally recognizable similitude in material and in use, and in applying its definition to the facts in the case.

Statutory similitude has been held to be a *substantial* similitude in one or more of the particulars mentioned in § 7 of the tariff act of 1897. *Arthur* v. *Fox*, 108 U. S. 125, 128; *Stuart* v. *Maxwell*, 16 How. 150, 162; *Murphy* v. *Arnson*, 96 U. S. 131, 133; *Pickardt* v. *Merritt*, 132 U. S. 252, 259.

Substantial similitude in material with cotton yarn is not established. If the particular importation had happened to consist of imitation horsehair whose source was wood pulp instead of cotton waste, the difference would have been in fact no greater than it is now.

The resulting product no longer consists of cotton, and is not entitled to be considered in any legislative sense a "manufacture" of cotton. *Meyer* v. *Arthur*, 91 U. S.

570, 576; *United States* v. *Proctor*, 145 Fed. Rep. 126; *Hardt von Bernuth* v. *United States*, 146 Fed. Rep. 61.

Substantial similitude in use is not established. Similitude to cotton yarn in general must be established; that is, it must be shown that the ordinary use of both artificial horsehair and cotton yarn is to effect in a particular manner or process the same concrete result. This is a proposition which argues itself; the statement of it satisfies at once the reasoning faculty. That thing has not been done in the case at bar. *Patterson* v. *United States*, 166 Fed. Rep. 733; *United States* v. *Rheims*, 175 Fed. Rep. 778.

In order to invoke similitude, it must be substantial, and it must be a lawfully recognizable similitude, a similitude to the very merchandise directly enumerated in the act, not a mere subdivision or a casual, special, or, as here, advanced form thereof.

Mr. Wade H. Ellis, with whom *Mr. John A. Kratz, Jr.*, was on the brief, for respondent:

The question of the similitude is one of fact. *Erhardt* v. *Steinhardt*, 153 U. S. 177; *Herman* v. *Arthur's Executors*, 127 U. S. 363, 370; *Wills* v. *Russell*, 100 U. S. 621.

The Government is asking this court to reverse the action of a court below based upon a question of fact; judgment based upon such finding will not be reversed unless there is no evidence to sustain it.

Similitude does not mean identity. If it did, then it would never be effective. *United States* v. *Roessler*, 137 Fed. Rep. 770. See also on this point and that of substantial similitude: *Greenleaf* v. *Goodrich*, 101 U. S. 278, 283; *Fisk* v. *Arthur*, 103 U. S. 431; *Arthur* v. *Fox*, 108 U. S. 125; *Pickhardt* v. *Merritt*, 132 U. S. 252; *Stuart* v. *Maxwell*, 16 How. 150; *Mandell et al.* v. *Seeberger*, 39 Fed. Rep. 760; *In re Herter Brothers*, 53 Fed. Rep. 913; *United States* v. *Dana*, 99 Fed. Rep. 433; *Hahn* v. *United States*, 100 Fed. Rep. 635; *Tiffany* v. *United States*, 112 Fed. Rep. 672; *In*

re Guggenheim Smelting Co., 112 Fed. Rep. 517; *Waddell & Co.* v. *United States*, 124 Fed. Rep. 301; *Rich* v. *United States*, 176 Fed. Rep. 732.

The evidence establishes that substantial similitude exists as to use to cotton yarn. *Downing* v. *United States*, 109 Fed. Rep. 885; T. D. 20556; G. A. 4334, Jan. 16, 1899.

The evidence establishes that substantial similitude exists as to material to cotton yarn.

The *Proctor*, *Patterson* and *Rheims Cases* cited by the Government do not apply.

The merchandise is a yarn commercially.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

This suit concerns the correct classification, under the tariff act of July 24, 1897, c. 11, 30 Stat. 151, of artificial or imitation horsehair, imported by the respondent into the port of New York on October 5, 1904.

Artificial or imitation horsehair is made from cotton waste by two processes, the Fremery and the Chardonnet. By the first process, referred to in the opinion of the Circuit Court of Appeals for the Second Circuit in *Hardt von Bernuth* v. *United States*, 146 Fed. Rep. 61, the cotton waste is dissolved in a solution of cup-ammonium, a salt of copper and ammonia, and this solution is forced through fine openings, discharging into a bath of acetic acid, forming threads of cellulose. By the second process the cotton waste, or raw cotton, is at first turned into gun cotton. This gun cotton is then mixed with alcohol and ether, and dissolved into a liquid, and this liquid is forced by pressure through pipes, at the end of which there are a number of small openings. The material is subsequently subjected to a process which it is not necessary to describe.

In the manufacture under both processes the single filaments are not allowed to solidify, although they are made

to stick together, whereas in the manufacture by the like process of artificial silk the fine filaments are grouped and twisted together and solidified. The imitation horsehair is usually dyed black, imported in skeins and sometimes on spools.

Imitation horsehair is not expressly mentioned in the Tariff Act of 1897, probably because it was not commercially known when the act was passed.

The provisions of the act of 1897 which are required to be considered in the determination of the question to be decided, briefly, are these, viz: § 6, providing for duty on non-enumerated articles; § 7, the "similitude clause;" paragraph 302, the cotton yarn clause, and paragraph 385, the silk yarn clause.

The goods were classified by the collector at the port of New York as "similar" to silk yarn, and reference was made to prior decisions, viz: G. A. 4939, 5081 and 5257. Duty was collected at the rate of "30 per centum ad valorem, under paragraph 385, the silk yarn provision, as a result of applying section 7 of the 'similitude clause.' The importer protested, claiming the merchandise to be dutiable at the rate provided by paragraph 302, by similitude to cotton yarn, or at the rate of 20 per cent. under section 6, as a non-enumerated manufactured article."

Before the Board of General Appraisers testimony was seemingly directed on the part of the importers to establishing that the material was, and on the part of the Government that it was not, a yarn. On June 22, 1906, the board reversed the action of the collector and sustained the alternative claim of the importers that the merchandise was dutiable as a non-enumerated manufactured article under § 6. G. A. 6387, T. D. 27442. It is worthy of remark, however, that pending the hearing before the board the Secretary of the Treasury, in Treasury Decisions 27350, May 15, 1906, directed collectors of customs that duty should be assessed on imitation horsehair as a non-

enumerated manufactured article at the rate of 20 per centum ad valorem under § 6.

By appropriate proceedings Eckstein, the respondent here, invoked the exercise of jurisdiction by the Circuit Court for the Southern District of New York for the review of questions of law and fact involved in the decision of the Board of General Appraisers, and in that court contended that the merchandise was a yarn and was by similitude dutiable under paragraph 302 as a cotton yarn. The court, after hearing additional testimony, decided that the merchandise was not yarn, *could not* by similitude be assessed as cotton yarn or yarn of any other kind, and that the board properly assessed it under § 6 as a manufactured article not otherwise provided for. 160 Fed. Rep. 287.

The Circuit Court of Appeals (167 Fed. Rep. 802) reversed the judgment, and held that the merchandise should be classified under § 7 of the act as a non-enumerated article similar to cotton yarn, and the duty should be assessed under the paragraph (302) relating to cotton yarn. Referring to its previous opinion in the *Bernuth Case*, already referred to, wherein it was held that artificial silk, which, as we have already said, is made by similar processes, should be so classified, the court said (p. 803):

"The judge of the Circuit Court affirmed the government's classification, distinguishing that case on the ground that artificial silk was found to be a yarn, whereas artificial horsehair, being solid, and not composed of twisted or spun filaments, is not a yarn. Admitting that this is so, still artificial horsehair is like cotton yarn in material, each being composed almost entirely of cellulose, and like it in use, being largely used as glazed cotton is in making hat braids, shoe laces, binding braids, tapes, and imitation horsehair. We think these resemblances establish its similitude to cotton yarn, even if the texture of the two articles is different."

This writ of certiorari was thereupon allowed.

The question is simply this: Did the Circuit Court of Appeals properly classify the merchandise?

The portion of § 7, the similitude clause of the act of 1897, with which we are concerned, is as follows:

"Section 7. That each and every imported article, not enumerated in this Act, which is similar, either in material, quality, texture, or the use to which it may be applied, to any article enumerated in this Act as chargeable with duty, shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned; . . ."

In the brief for the Government it is said: "It is well established that the requirements of the similitude clause of section 7 are satisfied if there be shown a proper similarity in any one of the four particulars, material, quality, texture or use," enumerated in the section. *Arthur* v. *Fox*, 108 U. S. 125.

As said by the Circuit Court of Appeals for the Second Circuit, in *United States* v. *Roesseler*, 137 Fed. Rep. 770, 773, "It must be borne in mind that the statute does not require identity; if that were necessary the statute would have no raison d'être."

The decision of the Board of General Appraisers and of the Circuit Court were placed upon the ground that the merchandise produced by a chemical process was not structurally a yarn, such as is produced by the mechanical process of spinning. It was not, by either the board or the court, found that there was no substantial similarity to cotton yarn in material or use. We think the evidence justifies the contention of counsel for the importer that commercially the merchandise is a yarn. As we have before said, the Government originally contended that it was a yarn, and it is reflex significance that in the Tariff Act of 1909 (August 5, 1909, 36 Stat. 11, 60, c. 6) special provision is made for these things in paragraph 405, as for "yarns, threads, filaments of artificial or imitation silk, or

of artificial or imitation horsehair, by whatever name known, and by whatever process made." But assuming, for argument sake, as did the Circuit Court of Appeals, that the merchandise is not a yarn, let us consider, even if the texture of the articles be different, whether it was correctly held that the similitude to cotton yarn was established because "artificial horsehair is like cotton yarn in material, each being composed almost entirely of cellulose, and like it in use, being largely used as glazed cotton is in making hat braids, shoe laces, binding braids, tapes, and imitation horsehair."

As to material: Respondent does not claim similarity between the merchandise in question and cotton because cellulose is found in each; the contention is that there is similarity in material because the proportion of the ingredients—cellulose, water, etc.—is the same in the merchandise in question as the proportion of the same ingredients in cotton. Counsel say, and the contention is, we think, supported by the evidence:

"The goods are made of cotton fibres. Cotton consists of pure cellulose with a small percentage of hydroscopic water. The merchandise in suit is pure cellulose with a small percentage of hydroscopic water. It differs only from the cotton fibre in that the cell structure has been broken down. Other than this, cotton and the merchandise in suit are identical in material. No element is found in cotton which is not present in this merchandise; no element is in this merchandise which is not found in cotton, and the proportion of elements in both is approximately the same."

As to use: Paragraph 302 of the act covers cotton yarns regardless of their use. Thus, yarns have four broad, general uses, viz: knitting, weaving, sewing and braiding, and manifestly a given cotton yarn could not be used for all the purposes of all cotton yarns. In the group of hard twisted yarns is found cotton yarn, used in the production

of hat braids, and in the same commercial group appears the merchandise in suit. One of the many varieties of cotton yarn used in making hat braids is what is known as glazed or polished cotton yarn. It is asserted and not denied that such merchandise has been uniformly classified for customs purposes as a cotton yarn, and so far from being a highly specialized and unusual commodity, it has been an important article of commerce for at least thirty years. However, while imitation horsehair is generally used in the production of hat braids and is used interchangeably with glazed cotton yarn for such purpose, it has, in common with cotton yarns, other uses, which are referred to in the opinion of the Circuit Court of Appeals.

Upon the whole, we are of opinion that both as to material and use there is a substantial statutory similitude between cotton yarns enumerated in paragraph 302 and the merchandise in question, both as to material and use. As the requirement of the statute is not that there shall be similarity in all of the four particulars enumerated in § 7, but a substantial similarity in one of those particulars may be adequate, the classification adopted by the Circuit Court of Appeals was proper, and its judgment is therefore

Affirmed.